



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

Administrative Offices
8995 East Main Street • Reynoldsburg, Ohio 43068-3399
Phone: (614) 466-2732 • Fax: (614) 466-6124
ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

March 9, 2006

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE – CROTON LAYER SITE NO. 1**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 1 (OFL1-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect

Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Kevin Hendershot as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 13, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through February 4, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, Kevin Hendershot, and Dan Scanlon conducted pit inspections as members of the Management Team. However, from December 1, 2005 through February 13, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 5, 2006.

ODA has determined that from December 1, 2005 through February 4, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

II. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

III. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are second cited violations with

the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$4,500.00 per week for 9 weeks, for a total of \$40,500 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$40,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Dailey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kiracofe, Licking SWCD



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March 9, 2006

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE - CROTON LAYER SITE NO. 2**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G), 901:10-2-08 and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT DAILY FREEBOARD
INSPECTIONS AND RECORD IN THE OPERATING RECORD**

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 2 (OFL2-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds and document the results of these inspections in the operating record in accordance with OAC 901:10-2-08.

At a limited inspection on January 19, 2006, the LEPP Inspector observed that there was no freeboard available in storm water pond, measurements taken confirmed a total lack of freeboard, and it was discovered that there were no inspection records documenting daily inspections in the Operating Record. ODA has determined that OFE failed to inspect each

storm water containment pond daily for freeboard. The inspection is to be recorded on the Croton Checklist form for the operating record.

B. CORRECTIVE ACTION REQUIRED

Immediately, OFE shall conduct the required daily freeboard inspections and record inspection results in the operating record.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations for failure to keep freeboard inspection records with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$200.00 per day and the potential for escalated enforcement.

II. SECOND VIOLATION: FAILURE TO MAINTAIN FREEBOARD

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) at 4. Surface Water Protection and Stormwater Controls contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No.2 (OFL2-0001.PO001.LICK) requires that OFE conduct daily inspections of the storm water ponds to ensure that freeboard of two feet is maintained.

On January 19, 2006, the LEPP Inspector inspected Croton Layer No. 2 and found that the storm water pond associated with Croton Layer No. 2 was completely full and overtopping into the perimeter containment berms. Specifically, at Croton Layer No. 2, the perimeter ditch on the north side of the facility was full with storm water, backed up between the barns and in front of Barn #16. The perimeter ditch on the south side of the facility was full and very near discharging at the southeast corner of the ditch. There were no discharges observed during this inspection, however, a significant amount of storm water was accumulating at the barn doors. Freeboard was not maintained in the storm water pond at Croton Layer No. 2, in violation of OAC 901:10-2-08.

B. CORRECTIVE ACTION REQUIRED

OFE shall continue to haul storm water until such time the levels in the storm water ponds correspond with the Manure Management Plan Waste Water/Storm Water Plan for Croton Layer No. 2 PTO OFL2-0001.PO001.LICK. By March 31, 2006, ODA will re-inspect the facility to determine if freeboard levels comply with OAC 901:10-2-08.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$1,600.00 per day and the potential for escalated enforcement.

If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$129,600.00 based on a total of \$1,800.00 per day for 72 days, beginning January 19, 2006 and ending March 31, 2006. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Harry Kallipolitis, Ohio EPA
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Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE – CROTON LAYER SITE NO. 4**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections.

The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Don Scanlon as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton Layer Site No. 4, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 13, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through February 4, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Dan Scanlon conducted pit inspections as members of the Management Team. However, from December 1, 2005 through February 4, 2006, the entire Management Team conducted only one inspection. That inspection occurred on January 5, 2006.

ODA has determined that from December 1, 2005 through February 4, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (K). Based upon this review, ODA has

determined that the violations cited herein are second cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$4,500.00 per week for 9 weeks, for a total of \$40,500.00 and the potential for escalated enforcement.

II. SECOND VIOLATION: FAILURE TO COMPLY WITH FREEBOARD REQUIREMENTS SET FORTH IN THE ODA PTO OFL4-0001.PO001.LICK

A. VIOLATION

OAC 901:10-1-10(G) requires OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Manure Management Plan Waste Water/Storm Water Plan (MMP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE maintain freeboard of two feet and maintain a total storage capacity of 10,174,000 gallons in the storm water ponds. Also, OFE must document the aforementioned inspections in the Operating Record.

During an inspection conducted by the ODA Inspector on February 13, 2006 it was discovered the southern embankment of the storm water pond has been lowered. In doing so, the original operating level of 4.75 feet for the pond has been altered, eliminating the 2 feet of freeboard as required by the PTO, in violation of the PTO for this facility. ODA files show that some lowering of the southern embankment commenced on or about December 5, 2005.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately take elevations of the southern embankment, which shall be used by OFE to determine the revised maximum operating level and the revised freeboard level for the pond. The elevations, the revised maximum operating level, and the revised freeboard level shall be submitted to ODA in writing and shall be recorded in the Operating Records of the facility.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of

penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$800.00 per day for 116 days, for a total of \$92,800.00 and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$113,300.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Dailey", with a long, sweeping horizontal line extending to the right.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
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March 9, 2006

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE – CROTON PULLET NO. 3**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Pullet No. 3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and 901:10-2-08 and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY
MANAGEMENT TEAM PIT INSECT INSPECTIONS**

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Pullet No. 3 (OFP3-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated January 26, 2006, OFE submitted a Table of Organization to ODA listing Don Hershey as Director of Operations, Chris Art as the Sr. Production Manager, Ronald Bishop as the Site Production Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton Pullet No. 3, which ODA construes as the individuals and titles of persons of the OFE Management Team.

During an inspection conducted on February 20, 2006, ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) for the period of August 8, 2005 through January 30, 2006. Beginning December 1, 2005, records show that Stephanie Tudor, Don Hershey, Chris Art, and Ronald Bishop conducted pit inspections as members of the Management Team. However, from December 1, 2005 through January 30, 2006, the entire Management Team conducted only one inspection. This inspection occurred on January 9, 2006.

ODA has determined that from December 1, 2005 through January 30, 2006, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of

penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total of \$22,500.00 and the potential for escalated enforcement.

II. SECOND VIOLATION: FAILURE TO MANAGE VEGETATIVE GROWTH ON POND EMBANKMENTS

A. VIOLATION

OAC 901:10-2-08(A)(4)(k) requires OFE to ensure that any emerging vegetation such as tress, shrubs, and other woody species not be allowed to grow on the ponds or side slopes of the ponds. Pond areas are to be kept mowed and accessible.

During an inspection on February 20, 2006 the ODA Inspector observed and documented trees growing on the embankment of the storm water pond at Croton Pullet No. 3.

B. CORRECTIVE ACTION REQUIRED

OFE shall immediately remove the trees and any other shrubs or woody species growing in the storm water pond embankment.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violation cited herein is a first cited violation with the category of seriousness of the violations as minor or Category III, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$500.00 per day for 40 days, for a total of \$20,000.00, and the potential for escalated enforcement.

By March 31, 2006, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$42,500.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Dailey", with a long, sweeping horizontal stroke extending to the right.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
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February 17, 2006

Certified Mail Return Receipt Requested

Sheldon Farms
9612 Twp. Road 64
Kenton, OH 43326

Kurt Sheldon
10736 St. Rt. 701
Kenton, OH 43626

**Re: NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE-
SHELDON FARM
RCC: SHEL-0001.RC001-HARD**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under § 903.16 of the Ohio Revised Code (O.R.C.), Sheldon Farms (Sheldon) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). Kurt Sheldon is the owner and the operator of Sheldon Farms. ODA has determined that Sheldon Farms has failed to comply with Ohio Administrative Code (O.A.C.) 901:10-1-10(F), 901:10-2-08, 901:10-2-10, and 901:10-2-16.

VIOLATION- WATER WELL TESTS

A. VIOLATION

ODA has determined that O.A.C. 901:10-2-08 and 901:10-2-16 of the O.A.C. have been violated.

Specifically, O.A.C. 901:10-2-08(A)(4)(i) requires that Sheldon Farms conduct annual sampling and analysis of ground water from a facility well. The results of the sampling and analysis are required to be documented in the Operating Record.

In addition, O.A.C. 901:10-2-16(A)(1)(a)(vii) requires that the Operating Record include the results of the ground water sampling and analysis.

O.A.C. 901:10-1-10(F) states that no person shall violate the terms and conditions of a Review Compliance Certificate. Review Compliance Certificate (RCC) SHEL-

0001.RC001-HARD requires annual ground water sampling and analysis at one well location.

Following an inspection on August 4, 2005, you were notified that a water sample had not been taken since July of 2004, and a sample was to be taken immediately to prevent a notice of violation. The LEPP Inspector also informed Sheldon Farms that groundwater analysis were required to be taken yearly and the results maintained in the Operating Record.

At a routine inspection on January 26, 2006, it was discovered that a well water sample had still not been taken since July 2004 and that Sheldon Farms needed to complete annual ground water sampling and analysis for total coliform and nitrates. Sheldon had not performed the required ground water sampling and analysis in violation of the above-cited rules and RCC SHEL-0001.RC001-HARD.

B. CORRECTIVE ACTIONS REQUIRED

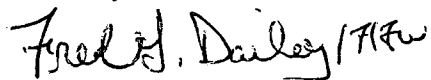
Upon receipt of this letter, you must immediately correct these deficiencies by collecting or obtaining the required ground water sample, having the sample tested for total coliform and nitrates, and recording the analytical results in the facility's Operating Record. You must keep the results of this test in your operating records. You must make these records available to the ODA Livestock Environmental Permitting Program inspector. A LEPP Inspector will re-inspect the facility by March 31, 2006 to determine if Sheldon Farms has returned to compliance.

C. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with O.A.C. 901:10-5-04. In determining the amount of the penalty to be assessed for this violation, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (G). Based upon this review, ODA has determined that the violation cited herein is the first cited violation with the category of seriousness of the violation as Category III, and the gravity of the violation as low. Therefore, if Sheldon Farms fails to comply with the corrective action required herein, Sheldon will be subject to the assessment of a civil penalty in the amount of \$300.00 for each day after March 31, 2006 as well as the potential for escalated enforcement.

Please feel free to direct any questions concerning this Notice of Deficiencies to Kevin Elder, Executive Director of LEPP. I look forward to your cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

CC: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Chris Rodabaugh, LEPP Inspector
Hardin SWCD
Cathy Alexander, Ohio EPA
Mike Nishimura - ODNR
Jennifer Tiell, ODA Legal
Mary Beth Ruttan, Assistant Attorney General



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

Administrative Offices
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Phone: (614) 466-2732 • Fax: (614) 466-6124
ODA home page: www.state.oh.us/agri/ e-mail: agri@odant.agri.state.oh.us

January 23, 2006

Certified Mail Return Receipt Requested

Jackson Farms
1048 S. R. 235 N
DeGraff, OH 43318

John and Sam Jackson
1048 S. R. 235 N
DeGraff, OH 43318

RCC#: JACK-0001.RC001-LOGA

Re: Director's Notice of Deficiencies Resulting in Noncompliance

Dear Mr. Jackson:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Jackson Farms is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Jackson Farms has failed to comply with Rule 901:10-2-08(A)(4)(a) of the Ohio Administrative Code (OAC).

I. VIOLATION: FAILURE TO MAINTAIN FREEBOARD

ODA has determined that Jackson Farms has failed to maintain adequate freeboard as required by Ohio Administrative Code Rule 901:10-2-08(A)(4)(a). At a limited inspection on January 6, 2006, the required freeboard was not maintained in your manure storage pond. As of January 6, 2006, there was no freeboard available in your manure storage pond. A subsequent inspection on January 12, 2006 was conducted and measurements were taken at the manure storage pond, confirming a total lack of freeboard.

II. CORRECTIVE ACTIONS REQUIRED

You have ten (10) days from the date on this letter within which you must correct these deficiencies by removing the manure from the manure storage pond and handling it correctly. Jackson Farms must remove an amount of freeboard sufficient to create and maintain two feet of freeboard. In your operating records you must keep records of the manure amounts removed and the final application or use of the manure. You must make these records available to the ODA Livestock Environmental Permitting Program inspector.

After the ten (10) day time period specified in this Notice has elapsed, an inspector will inspect your facility to determine whether or not you are in compliance. If you are still not in compliance, ODA will consider proceeding with other enforcement options, including assessing a civil penalty.

III. PENALTY ASSESSMENT

Pursuant to Rule 901:10-5-03(E) of the OAC, penalties assessed by the ODA shall be commensurate with the nature and degree of the violation and penalties shall be assessed in accordance with Rule 901:10-5-04 of the OAC. In addition to paragraph (D) of Rule 901:10-5-04 of the OAC, staff have referred to the penalty matrix in paragraphs (E) and (F) of Rule 901:10-5-04 of the OAC to determine that this is the first cited violation of the above-identified laws and rules, that the category of seriousness of the violations is moderate and the gravity of the violations is low level. The appropriate penalty in this matter will be \$800.00 per day beginning January 12, 2006, unless the deficiencies are corrected within ten (10) days from the date on this letter.

ODA reminds you of the need to comply with the land application rules if you decide to land apply to reduce the manure level in the pond.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Legal Counsel, Ohio Department of Agriculture
Chris Rodabaugh, LEPP Inspector
Mary Beth Ruttan, Assistant Attorney General
Cathy Alexander, Ohio EPA
Logan County SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

January 23, 2006

Certified Mail Return Receipt Requested

Longview Cattle, LLC
C/O Mr. Al Holthaus
11002 Reed Road
Versailles, Ohio 45380

Re: **NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Dear Mr. Holthaus,

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (O.R.C.), Longview Cattle, LLC is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD). ODA has determined that Longview Cattle, LLC has failed to comply with Rule 901:10-2-01(B)(3) of the Ohio Administrative Code (OAC).

I. VIOLATION: FAILURE TO COMPLY WITH PERMIT TO INSTALL PRIOR TO STOCKING WITH ANIMALS

ODA has determined that OAC 901:10-2-01(B)(3) has been violated. Specifically, facilities constructed in accordance with a Permit to Install (PTI) issued by ODA are required to be inspected by the Director or an authorized representative in a timely manner **prior** to stocking with animals. OAC 901:10-2-01(B)(3)

On September 9, 2005, the Director of the Ohio Department of Agriculture issued PTI LONG-0001.PI001.DARK to Longview Cattle. The PTI authorized remodeling of three starter barns and 5 grower barns at 11002 Reed Road. Two partial approval letters were sent to you. The first was a stocking approval letter for the three starter barns on September 21, 2005. The second letter was sent on October 28, 2005 and was for stocking approval of one grower barn. Between October 28, 2005 and January 9, 2006, three more grower barns were stocked without stocking approval from ODA. On January 17, 2006 the three stocked grower barns were inspected, but—again-- after stocking and in violation of the rule.

II. CORRECTIVE ACTIONS REQUIRED

Longview shall not populate the remaining grower barn until such time as that it has been inspected by the Director or the Director's authorized representative

III. PENALTY ASSESSMENT

Pursuant to O.A.C. 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violations and in accordance with O.A.C. 901:10-5-04. In determining of the amount of penalty to be assessed for these violations, ODA has also reviewed O.A.C. 901:10-5-04(D), (E), and (F). Based upon this review, ODA has determined that the violations cited herein are the first cited violations with the category of seriousness of the violations as Category Major, and the gravity of the effect of the violations as minor.

Therefore, if you fail to comply with the corrective actions required herein, you will be subject to the assessment of a civil penalty in the amount of \$1,600 for each day grower barn 2, 3, 4 and 5 violated OAC 901:10-2-01(B).

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Rogowski, LEPP Engineering
Jennifer Tiell Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Gail Rodabaugh, LEPP Inspector
Cathy Alexander, Ohio EPA
Darke SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

November 23, 2005

Ohio Fresh Eggs, LLC
Attention: Ron Flory
11212 Croton Road
P.O. Box 288
Croton, Ohio 43013-0288

Certified Mail # 7099 3400 0008 7266 805

Re: Warning Letter
Stocking Letter Two Barns

Mr. Flory,

On September 30, 2005, the Director of the Ohio Department of Agriculture proposed to revoke all permits that had been issued by ODA to Ohio Fresh Eggs, LLC. This action includes the Director's proposal to revoke Permit to Install (PTI) OFL4-0001.PI004.LICK. Subsequently, OFE requested a hearing in order to appeal the Director's proposed action. While this action and the appeal are pending, OFE has completed a portion of the barn renovations required by PTI OFL4-0001.PI004.LICK and by the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99-CV-756.

On November 21, 2005, the ODA Inspector for the Livestock Environmental Permitting Program (LEPP) conducted an inspection of OFE Croton Layer Site No. 4, PTI OFL4-0001.PI004.LICK, and that OFE had stocked Barn No. 44 with poultry in violation of Rule 901:10-2-02(B)(2) of the Ohio Administrative Code. This Rule states, in pertinent part, "Facilities are required to be inspected by the Director or an authorized representative in a timely manner prior to stocking with animals."

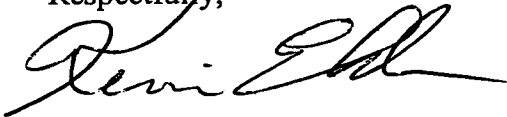
This letter is provided for the limited purpose of documenting that recent construction of two of the seven barns renovated to belt battery facilities at OFE Croton Layer Site No. 4 are approved for use. This letter is also meant to serve as a partial stocking letter for two of the seven belt battery barns, that is, barns 44 and 46.

Further, barns 44 and 46 may be stocked with birds only on condition that water is removed from the manure conveyor and the manure pit. In addition, construction debris must also be removed from the entire length of the manure cross conveyor belt.

Please inform this office when barns 48 and 50 are ready for inspection. Before ODA can document completion of the work for all seven barns at Croton Layer Site No. 4, all earthwork, grading, and seeding on the eastern half of the operation and between the even numbered barns and the manure storage building need to be completed by the time barns 52, 54, and 56 are completed in order to prevent standing water between the barns and along the eastern portion of these barns. This shall also include the installation of the pump station and reception pit to pump the water to the stormwater pond.

Nothing in this letter shall be interpreted to contravene the Director's proposed action to revoke PTI OFL4-0001.PI004.LICK while the Director's action is pending. If you have any questions or concerns, please feel free to contact my attorney, Jenny Tiell, at (614) 387-0912 or me at 614-387-0470.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin Elder", written in a cursive style.

Kevin Elder
Executive Director, ODA-LEPP

Cc: Andy Rogowski, ODA-LEPP Engineer
Jim Young, ODA-LEPP Inspector
Mary Beth Ruttan, Assistant Attorney General
Jennifer Tiell, Legal Counsel
File



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
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Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

October 27, 2005

Certified Mail Return Receipt Requested

Pieter Assen
Johannes Assen
8500 Yankeetown-Chenoweth Road
London, Ohio 43140

Re: Warning Letter

Gentlemen:

I am writing to you as a result of an inspection conducted by my staff on October 19, 2005. The Inspector from the Livestock Environmental Permitting Program (LEPP) found that your farm does not have a staff gauge or depth marker or other device to measure the liquid levels in your manure lagoon. You are required to install a staff gauge as soon as possible but no later than December 15, 2005.

Not only does Rule 901:10-2-06 of the Ohio Administrative Code (OAC) require you to install a staff gauge in the lagoon, but other ODA rules require you to use the gauge to monitor the liquid levels of the lagoon and to record the levels in your Operating Record. These requirements are in Rules 901:10-2-08 and 901:10-2-16.

Finally, I advise you that these requirements for an installed staff gauge, periodic monitoring, and records of liquid levels are all requirements of federal rules enforced by the United States Environmental Protection Agency. My staff and I will work with you to answer any questions you may have about these rules and the requirements in Ohio rules.

I advise you to read your Inspection Report carefully and follow all directions made by the LEPP Inspector. You are also advised to follow the directions of this letter.

Sincerely,

Kevin H. Elder
Executive Director, Livestock Environmental Permitting Program

Cc: Jim Young, LEPP Inspectors
Cathy Alexander, Ohio EPA
Madison SWCD
File



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

October 21, 2005

Mr. Don Belt
9317 Young Road
Union City, Ohio 45390

Certified Mail

Re: **Warning Letter**

Dear Mr. Belt:

Violation of Ohio Department of Agriculture (ODA) laws and rules was discovered during a complaint investigation by staff from the Livestock Environmental Permitting Program (LEPP) on October 13, 2005. On that date, the LEPP Inspector noted that darkling beetles had infested several homes in the area of 2116 Greenville-Nashville Road. Poultry manure had been applied to a nearby field and incorporated. No beetles were observed in the field but residences located within a quarter mile of the field had problems with beetles. Violations include the following:

PSA-Cherrystone is required to comply with the Insect and Rodent Control Plan that is an approved Plan in the facility's Review Compliance Certificate (RCC). Rule 901:10-2-19(B)(3)(a)(iii) states:

Appropriate control actions shall be undertaken promptly when activity of insects and rodents is observed that requires actions as described in the plan.

Further, rule 901:10-2-19(B)(3)(a)(v) states:

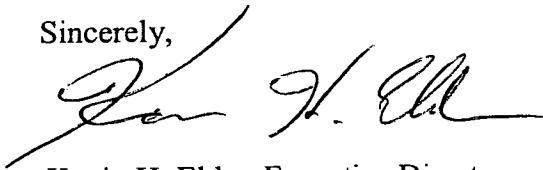
Appropriate control actions shall be undertaken prior to the removal of manure to minimize the activity and reduce the presence of insects and rodents at the facility.

Finally, RCC CHER-0001.RC001-DARK, issued to PSA-Cherrystone for the facility at 1593 Wildcat Road, Union City requires compliance with the Insect and Rodent Control Plan in the RCC. This Plan states:

1. Before manure is removed from the buildings the manure pits will be treated for darkling beetles.

An inspector plans to re-inspect your operation within the next 30 days. Please assure that at that inspection the items noted in this letter have been addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the follow-up inspection indicates the continuance of the violations, this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin H. Elder", written over a horizontal line.

Kevin H. Elder, Executive Director
Livestock Environmental Permitting Program

Cc: Chris Rodabaugh, LEPP Inspector
Jennifer Tiell, Legal Counsel
Cathy Alexander, Ohio EPA
Mike Nishimura, ODNR-DSWC
Darke SWCD



Ohio Department of Agriculture



Governor Bob Taft

Lieutenant Governor Jennette Bradley

Director Fred L. Dailey

Administrative Offices

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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Layer Site No. 1 Permit to Operate (PTO) (OFL1-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005,

OFE failed to maintain a 30% or less manure moisture levels at Barn Nos. 2, 4, 6, 8, and 14B. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn No. 13A.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Croton Layer No. 1 on September 6, 2005, showed that the 7 tier belt-battery Barns Nos. 2, 4, 6, 8 and 10 were promoting fly breeding due to lower rates of air flow and lack of proper barn ventilation for manure drying. Barn No. 14B had extreme levels of larvae and extreme levels of pupae because the manure was not being dried as rapidly as possible by the use of pit fans, as required by the permit.

Finally, the manure storage building was put in use on September 3, 2005. The permit requires that belts in the barns will be operated once every day to ensure that good drying occurs on the belts and that a dry product is carried to storage. Due to insufficient air to dry the manure on the belts coming out of the layer barns, the manure in the manure storage building was wet, starting to turn anaerobic, and had abundant larvae.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately take appropriate measures to control larvae and pupae in Barn Nos. 2, 4, 6, 8, 10, and 14B and in the manure storage barn. OFE shall repair air ducts and undertake any related work that is necessary to increase airflow on the conveyor belts and improve ventilation in the barns in order to dry the manure at Barn Nos. 2, 4, 6, 8, and 10. OFE shall fix, repair, and/or clean the turbo fans in Barn 14B to improve airflow and manure drying and /or scrape manure every day with scraperboards.

C. PENALTY ASSESSMENT

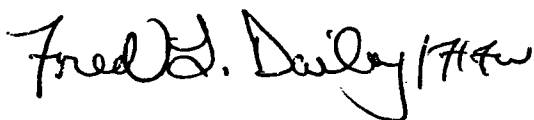
Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$27,683, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject

to the assessment of a civil penalty up to \$27,683.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Fred L. Dailey". To the right of the signature, there is a handwritten number "174" with a horizontal line through it.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft
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Director Fred L. Dailey

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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Layer Site No.2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Layer Site No. 2 Permit to Operate (PTO) (OFL2-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn Nos.16, 17, 18, 20, 24, 27, and 28. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn Nos. 15, 19, 21, 22, 23, 25, 26, 27A, and 28B.

OFE's IRCP requires that manure is dried as rapidly as possible in order to maintain 30% moisture or less (as sampled on a quarterly basis). An inspection at OFE Croton Layer No. 2 on September 6, 2005, showed that the manure in these barns is too wet to be removed. The manure in Barn No. 28 was wet with flies actively breeding in the manure

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to take appropriate measures to allow thorough manure drying prior to manure removal from the barns. OFE shall immediately begin to use turbo fans in Barn No. 28 to assist in drying the manure.

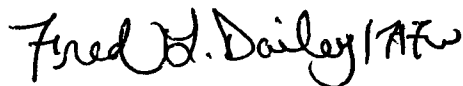
C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$37,209.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$37,209.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey" followed by a stylized monogram or initials "AFW".

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Layer Site No.3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Layer Site No. 3 Permit to Operate (PTO) (OFL3-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn Nos. 29, 30, 32, 33,

34, 35, 37, 38, 39 and 42. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE failed to maintain 30% or less manure moisture levels at Barn No. 31, 40, 41, 41A and 42B.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Croton Layer No. 3 on September 6, 2005, showed the following:

- The manure in Barn Nos. 30 and 32 was too wet to allow inspectors to enter the barns. Larvae and pupae (in Barn No. 30) and flies (in both Barn Nos. 30 and 32) were observed at abundant levels.
- The manure in Barn Nos. 32, 34, 37, 38 and 42 was wet and seeping or running out of the doors or the concrete block of barn walls.
- The manure in Barn Nos. 33, 34, 35, 37, 39, and 42 was wet and blocking the doors, preventing entry by the inspectors.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to plan for manure removal only at such time as the daily low temperatures are below 40 degrees F. However, OFE shall not land apply manure from late November-December 2005 until March-April of 2006. Application on frozen or snow-covered ground is to only be utilized during emergency situations and not used as a routine practice in any manure management plan. Please keep in mind that if manure is to be applied on frozen or snow covered ground, the ODA must be contacted prior to this application.

Upon receipt of this letter, OFE is required to immediately take measures to control flies, larvae, and pupae in Barn Nos. 30 and 32. Further, OFE shall take appropriate action to dry the manure and/or contain manure within the barns until such time as the manure can be removed.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$61,383.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying

with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$61,383.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred L. Dailey" followed by a stylized flourish or initials.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft

Lieutenant Governor Jennette Bradley

Director Fred L. Dailey

Administrative Offices

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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the OFE Croton Layer Site No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**A. VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR
LESS AS REQUIRED BY THE INSECT AND RODENT CONTROL
PLAN**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Croton Layer Site No. 4 (OFL4-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least January 1, 2005 through March 31, 2005, OFE has failed to

maintain a 30% manure moisture level or less at Barn Nos. 43, 45, 47, 49, 51, 53, 55; and 55A.

OFE's IRCP requires that manure is dried as rapidly as possible and stay dry in order to suppress fly and fly larval development.

An inspection at OFE Croton Layer No. 4 on September 6, 2005, showed that flies in the 7-tier belt-battery Barns Nos. 43, 47, and 49 had moderate to abundant flies. Attached at the end of the belt battery barns were banks of fans that were covered with plastic. Barn No. 55 contained manure that was too wet to allow inspectors to enter. Barn No. 55A contained abundant larvae and moderate to abundant flies. The permit requires that pit fans are used in Barn No. 55A to enhance manure drying and pit fans will be run as long as necessary to control manure moisture levels. Pit fans in Barn No. 55A disconnected and were sitting on the floor.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately take measures to control flies and larvae in Barn Nos. 43, 47, and 49. OFE shall fix, repair, or clean the turbo fans in Barn No. 55A to improve airflow and manure drying to less than 30% moisture in the manure. OFE shall reconnect or reinstall and use the pit fans in Barn No. 55A to dry manure to less than 30% moisture.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$8,411.00, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$8,411.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Fred L. Dailey".

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Pullet Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Pullet Site No. 1 Permit to Operate (PTO) (OFFP1-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has

determined that from at least January 1, 2005 through March 31, 2005, OFE has failed to maintain a 30% manure moisture level at Barn No. 5.

In addition, OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. The permit requires that belts in the barns will be operated once every day to ensure good drying on the belts and that a dry product is carried away from the barn to manure storage or land application. An inspection at OFE Croton Pullet No. 1 on September 6, 2005, showed that flies in Barn Nos. 4 and 5 were moderate to abundant due to lower rates of air flow and lack of proper ventilation for manure drying on the conveyor belts.

The permit also requires complete vegetation control within a 3 ft. perimeter of all buildings e.g. gravel, mulch, chemical control. Vegetation height shall be kept to six inches or less between the buildings throughout the facility grounds. The inspection showed uncontrolled vegetation between the barns at Croton Pullet Site No. 1.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately and permanently cover the conveyor belt that removes manure from the barns to the load out area and to clean up any spilled manure. OFE shall maintain vegetation below 6 inches around and between the buildings. OFE shall fix, repair, or clean the exhaust fans to improve airflow and manure drying. OFE shall repair air ducts and undertake any related work that is necessary to increase airflow and ventilation on the conveyor belts in order to dry the manure.

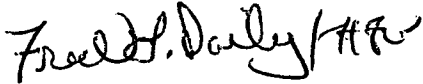
C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$446.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$446.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Fred L. Dailey" followed by a stylized set of initials.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft

Lieutenant Governor Jennette Bradley

Director Fred L. Dailey

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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for OFE Croton Pullet Site No. 3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in OFE's Croton Pullet Site No. 3 Permit to Operate (PTO) (OFF3-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. Manure moisture reports demonstrate that from at least January 1, 2005 through June 30, 2005, OFE has failed to maintain 30% manure moisture level or less at Barn No. 12. Manure moisture reports demonstrate that from at least January 1, 2005 through March 31, 2005, OFE has failed to maintain 30% or less at Barn Nos. 14 and 15.

OFE's IRCP requires that manure is dried as rapidly as possible and stays dry in order to suppress fly and fly larval development. An inspection at OFE Croton Pullet No. 3 on September 6, 2005, showed that flies and larvae in Barn Nos. 12, 14, and 15 were abundant and extreme because the manure is not dried as rapidly as possible by more frequent manure turning.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately take appropriate actions to dry manure by improvements to manure turning by adding sufficient equipment, such as a custom spray rig, and personnel for chemical spraying. OFE shall fix, repair, and/or clean the exhaust fans to improve airflow and manure drying.

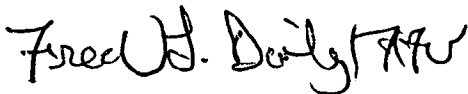
C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as major or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$8,100.00 and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$8,100.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the OFE Croton Pullet Site No. 4. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**A. VIOLATION: FAILURE TO MAINTAIN 30% MOISTURE OR LESS AS
REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for OFE Pullet Site No. 4 (OFP4-0001.PO001.LICK) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis). ODA has determined that from at least January 1, 2005 through June 30, 2005, OFE has failed to maintain a 30% at Barn Nos. 17, 19 and 21 in order to reduce the presence of insects. ODA has determined that from at least January 1, 2005 through March 31, 2005, OFE has failed to maintain a 30% manure moisture level or less (as sampled on a quarterly basis) at Barn No. 20 in order to reduce the presence of insects.

OFE's IRCP requires that manure is dried as rapidly as possible and stay dry in order to suppress fly and fly larval development. An inspection at OFE Croton Pullet No. 4 on September 6, 2005, showed that larvae and pupae in Barns Nos. 17, 19, and 20 were abundant and extreme.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately improve manure turning by adding sufficient equipment, such as a custom spray rig, and personnel for chemical spraying. OFE shall fix, repair, or clean the exhaust fans to improve airflow and manure drying.

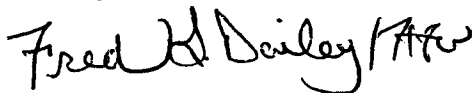
C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category I, and the gravity of the violations as medium. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$4,050.00, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$4,050.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
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October 14, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
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Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Mt. Victory Layer Site No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(G) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

A. VIOLATION

OAC 901:10-1-10(G) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) for Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE maintain 30% moisture or less (as sampled on a quarterly basis) in order to reduce the presence of insects. ODA has determined that from at least January 1, 2005 through June 30, 2005, OFE has failed to maintain a 30% manure moisture level at Barns Nos. 2, 3, 4, 5, 9, and 10.

Further, OFE's IRCP requires that pit fans be installed and used as a method to enhance manure drying in order to suppress fly and larval activity. An inspection at Mt. Victory on September 7, 2005, showed that in Barns Nos. 1, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, and 15 pit fans were not working or disconnected, could not be utilized as the fans were designed to be used on cables so that the fans could be moved around the whole barn to any area where manure needed to dry. The

ODA inspector found that cables could not be used to move the pit fans for ventilation since bait cards hanging on wires are placed on the cables and block cable movement.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately remove wires and bait cards running the length of the barns that are blocking the cables to allow the movement of pit fans to manure rows where drying is most needed. Pit fans shall be repaired or replaced and connected for use as required by the IRCP in the permits. OFE shall repair air ducts and undertake any related work that is necessary to increase airflow and ventilation, including replacement of missing louvers and removal of accumulated dirt on fans and louvers.

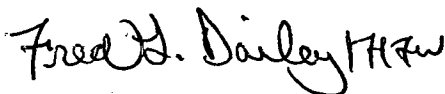
C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category I, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$85,342.00, and the potential for escalated enforcement.

By October 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$85,342.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Howard Lyle, Hardin SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

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September 29, 2005

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Re: Proposed Action to Issue a Revocation Order

Gentlemen:

This document is notice that the Director of the Ohio Department of Agriculture ("Director" or "ODA"), under the authority of the Ohio Revised Code ("ORC") section 903.09(F) proposes to issue an order to Ohio Fresh Eggs, LLC ("OFE") to revoke the Permits to Operate ("PTO" or "PTOs") and Permits to Install ("PTI" or "PTIs") listed below in Paragraph 1 due to OFE's failure to comply with ORC section 903.02(C)(1), ORC section 903.03(C)(1), ORC section 903.05, and Ohio Administrative Code ("OAC") 901:10-1-02(A)(4).

Notice

Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the proposed action. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Chief Counsel, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio

Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on September 30, 2005.

Please note that if your company is a limited liability company or a corporation, only an attorney at law admitted to practice in the State of Ohio may request the hearing and represent the company at the hearing. A court reporter will be present at the hearing to make a record of the proceedings and to swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why the proposed order should not be issued as a final order. Following the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of the Ohio Department of Agriculture for consideration.

Be advised that if you fail to request a hearing within 30 days from the mailing of this proposed action, the Ohio Department of Agriculture will issue as a final order the proposed action attached hereto without a hearing.

Director's Proposed Findings and Orders

1. ODA previously issued and now proposes to revoke the following PTIs and PTOs:

Croton Facilities

- a. OFL1-0001.PI001.LICK for Croton Layer Site Number 1 in Licking County;
- b. OFL2-0001.PI001.LICK for Croton Layer Site Number 2 in Licking County;
- c. OFL3-0001.PI001.LICK for Croton Layer Site Number 3 in Licking County;
- d. OFL4-0001.PI001.LICK for Croton Layer Site Number 4 in Licking County;
- e. OFL1-0001.PO001.LICK Croton Layer Site Number 1 in Licking County;
- f. OFL2-0001.PO001.LICK Croton Layer Site Number 2 in Licking County;
- g. OFL3-0001.PO001.LICK Croton Layer Site Number 3 in Licking County;
- h. OFL4-0001.PO001.LICK Croton Layer Site Number 4 in Licking County;
- i. OFP1-0001.PO001.LICK for Croton Pullet Site Number 1 in Licking County;
- j. OFP2-0001.PO001.LICK for Croton Pullet Site Number 2 in Licking County;
- k. OFP3-0001.PO001.LICK for Croton Pullet Site Number 3 in Licking County;
- l. OFP4-0001.PO001.LICK for Croton Pullet Site Number 4 in Licking County;
- m. OFHB-0001.PO001.LICK for Croton Breeder-Hatchery in Licking County;

Northern Facilities

- n. OFGO-0001.PO001.HARD for Goshen Pullet Site Number 5 in Hardin County;
- o. OFMT-0001.PO0001.HARD for Mt. Victory Layer Site Number 5 in Hardin County;
- p. OFMA-0001.PO001.WYAN for Marseilles Layer Site Number 6 in Wyandot County.

2. OFE has violated and is in violation of ORC section 903.02(C)(1), ORC section 903.03(C)(1), ORC section 903.05, and OAC 901:10-1-02(A)(4).

Proposed Revocation for Providing False or Misleading Information

3. ORC section 903.02(C)(1) requires that an applicant for a Permit to Install include on the application the name and address of "any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant"
4. ORC section 903.03(C)(1) requires that an applicant for a Permit to Operate include on the application the name and address of "any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant"
5. OAC 901:10-1-02(A)(4)(a) requires that "An application for a permit to install, permit to operate or NPDES permit shall include information on ownership and background, including but not limited to, the following information: The name and address . . . of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors or managers of the applicant"
6. OAC 901:10-1-02(A)(4)(b) requires that "each application for a permit to install or permit to operate must contain information on a record of past compliance if the applicant has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application."
7. ODA has determined that OFE failed to notify ODA prior to the issuance of the permits of the names and addresses of "any other person who has the right to control, or in fact controls, the management of the applicant or the selection of officers, directors, or managers of the applicant."
8. Beginning in June 2003, OFE submitted applications to ODA for permits that failed to include the name and address of Austin J. "Jack" DeCoster, an individual associated with the applicant who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant.
9. By failing to list Austin DeCoster on the permit applications as required, OFE's permit applications contained misleading or false information.
10. ORC section 903.02(D)(1) and ORC section 903.03(D)(1) provide that the Director shall deny a PTI and/or PTO if "the permit application contains misleading or false information."
11. In addition, OAC 901:10-1-03(A)(1) provides that "The Director shall deny, suspend or revoke a permit to install or permit to operate if: (1) The permit application contains misleading or false information"

12. Based on OFE's submission of false or misleading permit applications, the Director proposes to revoke all permits issued to OFE.

Proposed Revocation for History of Substantial Non-compliance

13. In addition to submitting false or misleading permit applications, OFE failed to disclose that Austin DeCoster has a history of substantial noncompliance in the operation of concentrated animal feeding facilities that indicates that he lacks sufficient reliability, expertise, and competence to control the management of OFE, or the selection of officers, directors, or managers at OFE.

14. ORC section 903.05(B) provides that, "If the applicant for a permit to install or permit to operate has been involved in any prior activity involving the operation of a concentrated animal feeding facility, the director of agriculture may deny the application if the director finds from the application, the information submitted under divisions (A)(1) to (3) of this section, pertinent information submitted to the director, and other pertinent information obtained by the director at the director's discretion that the applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the 'Safe Drinking Water Act,' as defined in section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with [ORC chapter 903] and rules adopted under it."

15. OAC 901:10-1-03(B)(1)(a) provides, in part:
"The Director may deny, suspend or revoke a permit to install or permit to operate if:

"(1) The applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of substantial noncompliance with the Federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in Section 6109.01 of the Revised Code, any other applicable state laws pertaining to environmental protection or environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise and competence to operate the proposed new or modified facility in substantial compliance with Chapter 903. of the Revised Code and these rules.

"(a) In evaluating a history of substantial noncompliance as required, the director may consider all of the following for a period of five years preceding the date of the application:

* * * *

"(ii) Any administrative enforcement action (including an administrative order of notice of violation), civil suit, or criminal proceeding that is:

* * * *

“(b) Resolved or dismissed in a settlement agreement, in a consent order or decrees, is adjudicated or otherwise dismissed and that may or may not have resulted in the imposition of:

“(i) A sanction such as a fine, penalty, payment or work or service performed in lieu of a fine or penalty; or

“(ii) Cessation or suspension of operations.

* * * *

“(c) Any revocation, suspension, or denial of a license or permit or equivalent authorization”

16. Based on OFE’s failure to submit any information regarding Austin DeCoster’s past compliance with laws pertaining to environmental protection, and the Director’s finding that Austin DeCoster has a history of substantial non-compliance with laws pertaining to environmental protection that indicates Austin DeCoster lacks sufficient reliability, expertise, and competence to operate a Concentrated Animal Feeding Facility in substantial compliance with ORC chapter 903 and the rules adopted under it, the Director proposes to revoke all permits issued to OFE.

Violations

17. Based on OFE’s failure to disclose the identity of DeCoster, an individual with the right to control, or control of the management of OFE, or the selection of officers, directors, or managers of the applicant; OFE has violated ORC section 903.02(C)(1), ORC section 903.03(C)(1), and OAC 901:10-1-02(A)(4)(a).

18. Based on OFE’s failure to disclose DeCoster’s history of substantial noncompliance with laws pertaining to environmental protection in the operation of Concentrated Animal Feeding Facilities (“CAFF”); OFE has also violated, ORC section 903.05, and OAC 901:10-1-02(A)(4)(b).

19. Due to OFE’s violation of the statutes and rules cited above, the Director proposes to revoke OFE’s PTIs and PTOs pursuant to ORC section 903.02(D)(1), ORC section 903.03(D)(1), OAC 901:10-1-03(A), and OAC 901:10-1-03(B).

The findings in support of the Director’s proposed revocation are as follows:

1. Beginning in June of 2003 and continuing until November 24, 2003, OFE submitted permit applications, additions and corrections to the applications, as well as supporting documents to ODA to obtain the permits listed above.

2. Ohio Fresh Eggs, LLC is a limited liability company owned 70% by Hillandale Farms, LLC and 30% by Ohio Ag Investors, LLC. Donald Hershey wholly owns Fresh

Eggs Manager, LLC, which wholly owns Ohio Ag Investors. Orland Bethel is the sole member of Hillandale Farms.

3. OFE's permitted facilities consist of:

- a. Four commercial layer sites, four commercial pullet sites, and a hatchery-breeder-pullet site in Croton, Ohio. These facilities are hereinafter referred to as the "Croton facilities" or "Croton."
- b. The Mt. Victory Layer Site Number 5, Mt. Victory, Ohio; Marseilles Layer Site Number 6, Harpster, Ohio; and Goshen Pullet Site Number 5, LaRue, Ohio. These facilities are hereinafter referred to as the "Northern Facilities."

4. As part of the application process, OFE was required to include on each application the name and address "of any other person who has the right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant" O.R.C. section 903.02(C)(1) and ORC section 903.03(C)(1).

5. As part of the application process, OFE was also required to provide information regarding the history of environmental compliance of "persons associated with the applicant." "If the applicant for a permit to install or permit to operate has been involved in any prior activity involving the operation of a concentrated animal feeding facility, the director of agriculture may deny the application if the director finds . . . that the applicant and persons associated with the applicant, in the operation of concentrated animal feeding facilities, have a history of noncompliance with the Federal Water Pollution Control Act, the 'Safe Drinking Water Act,' as defined in section 6109.01 of the Revised Code, and other applicable state laws pertaining to environmental protection, or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the proposed new or modified concentrated animal feeding facility in substantial compliance with this chapter and rules adopted under it." ORC section 903.05(B).

6. OFE was required to submit names, addresses, and background investigation information consistent with ORC section 903.02, ORC section 903.03, ORC section 903.05, and OAC 901:10-1-02 for the owners and operators of the facilities, any person associated with the applicant, and any person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant.

Permit Applications and Information Submitted by OFE

7. In the permit applications, OFE named and provided background information for only Donald Hershey and Orland Bethel as the owners of OFE, and Ronald L. Flory and Mohamed Mousa Aboughazala¹ as the operators of OFE.
8. In August of 2003, OFE represented to ODA that, although there would be an anonymous purchaser of an option to purchase OFE ("optionee"), that anonymous purchaser could not be classified as anyone in control of the management of OFE or the selection of officers, directors or managers of OFE.
9. Throughout the permitting process, counsel for ODA continued to express concerns to counsel for OFE regarding the identity of the optionee, as well as the level of control the optionee would have at OFE. OFE continued to reassure ODA that the optionee would exercise no more oversight or control over OFE than a bank would.
10. OFE failed to name or fully disclose the level of control Austin J. DeCoster ("DeCoster") would have at OFE despite ODA's demonstrated concern that an unacceptable person would exercise management control over OFE.

OFE's Purchase of the Croton and Northern Facilities from Anton Pohlman and Buckeye Egg Farm

11. On April 15, 2003, OFE entered into a Letter Agreement with Anton Pohlman ("Pohlman") and Buckeye Egg Farm, LP ("BEF") in which OFE transferred a sum of money for the exclusive right to purchase the Croton facilities under the terms and conditions of the Letter Agreement.
12. Ohio Investments Co., LLC, a one person limited liability company owned by DeCoster, lent money to OFE for the deposits for the purchase of the Croton facilities. The April 15, 2003 Letter Agreement between BEF and OFE was accompanied by a Confidential Guarantee signed by Austin and Peter DeCoster guaranteeing payment and performance by OFE of the terms of the Letter Agreement. The Confidential Guarantee also includes the statement that, "All parties to such Letter Agreement acknowledge that it is a critical condition of this guarantee (and of Buyer's payment of the Deposit and entering into the Letter Agreement) that the undersigned's involvement in this transaction be kept absolutely confidential and not released to any party (including the Seller's lending group) or agency without the express written consent of the undersigned or their counsel."
13. On August 6, 2003, counsel for OFE notified ODA that an anonymous optionee would be acquiring an option to purchase OFE. Counsel asserted that the optionee could not be classified as anyone in control of management of the applicant, or the selection of officers, directors, or managers.

¹ Mohamed Mousa Aboughazala resigned effective August 31, 2005.

14. On August 12, 2003, OFE entered into a Letter Agreement with Pohlman and BEF in which OFE transferred a sum of money for the exclusive right to purchase the Northern facilities under the terms and conditions of the Letter Agreement.

15. Ohio Investments Co., LLC, also lent money to OFE for the deposits for the purchase of the Northern facilities. The August 12, 2003 Letter Agreement was accompanied by a Confidential Guarantee signed by Austin DeCoster guaranteeing payment and performance by OFE of the Letter Agreement. The Confidential Guarantee also includes the statement that, "All parties to such Letter Agreement acknowledge that it is a critical condition of this guarantee (and of Buyer's payment of the Deposit and entering into the Letter Agreement) that the undersigned's involvement in this transaction be kept absolutely confidential and not released to any party (including the Seller's Lenders Group) or agency without the express written consent of the undersigned or their counsel."

16. On September 12, 2003, OFE entered into an Asset Purchase Agreement with Pohlman and BEF setting forth the terms and conditions of the sale of the Croton facilities to OFE. Ohio Investments Co., LLC lent money to OFE for this purchase.

17. On December 23, 2003, ODA issued permits to OFE for the Croton facilities. At this time OFE's applications for permits for the Northern facilities were still pending at ODA.

18. On December 26, 2003, OFE entered into an Asset Purchase Agreement with Pohlman and BEF setting forth the terms and conditions of the sale of the Northern facilities to OFE. Ohio Investments Co., LLC lent money to OFE for this purchase.

19. Ownership of the Croton facilities transferred from Pohlman and BEF to OFE on December 26, 2003, three days after OFE received permits for the Croton facilities.

Option to Purchase and Master Agreement

20. The same day that OFE obtained ownership of the Croton facilities, December 26, 2003, OFE entered into a separate Option to Purchase and a Master Agreement, with DeCoster regarding the Croton facilities.

a. The December 26, 2003 Option to Purchase among Ohio Investments Co., LLC and Ohio Ag Investors, LLC, and Hillandale Farms, LLC provides DeCoster with the opportunity to purchase either the shares of OFE or the assets of OFE through 2020 with the possibility of DeCoster extending the option to 2030. In addition, the Option to Purchase establishes certain rights and responsibilities among the parties.

b. The Master Agreement among OFE, Donald Hershey, Fresh Eggs

Manager, Ohio Ag Investors, Hillandale Farms, Hillandale Farms of PA, Croton Construction, Ohio Investments, Austin DeCoster the sole trustee for the DeCoster Revocable Trust, and Austin DeCoster as the Guarantor of the revocable trust's and Ohio Investments' obligations establishes additional rights and responsibilities among the parties.

21. The December 26, 2003 Option to Purchase indicates OFE's intention to also purchase the Northern facilities from BEF and Anton Pohlmann. The Option to Purchase includes the provision that, upon OFE's acquisition of the Northern facilities from BEF, DeCoster's Option to Purchase would extend to the Northern facilities.
22. Eight weeks elapsed between the date the parties signed the Option to Purchase and the date ownership of the Northern facilities transferred to OFE.
23. OFE never amended the permit applications pending for the Northern facilities between the date the parties signed the Option to Purchase and the date ODA issued the permits for the Northern facilities
24. ODA issued permits for the Northern facilities on February 2, 2004.
25. Ownership of the Northern facilities transferred from Anton Pohlman and BEF to OFE on February 18, 2004.
26. Between June of 2003 and February 2, 2004, OFE, ODA, as well as their respective counsel, communicated on numerous occasions regarding the applications, supporting documentation, background investigation information, and other information.
27. Until October 2004, OFE did not disclose to ODA the fact that the Option to Purchase between OFE and DeCoster was signed and effective.
28. On October 12, 2004, Jerry Crawford, an attorney representing DeCoster, met with ODA counsel and divulged that DeCoster held the Option to Purchase OFE.
29. On October 14, 2004, representatives of OFE met with ODA and acknowledged that the Option to Purchase Agreement existed between OFE and DeCoster whereby, in exchange for the Option to Purchase, DeCoster loaned money to OFE to allow OFE to purchase the Croton and Northern facilities.
30. Following the disclosure of the Option to Purchase, OFE continued to represent to ODA that the holder of the Option to Purchase could not be classified as anyone in control of management of the applicant or the selection of officers, directors, or managers of the applicant. OFE asserted that there was no obligation to name DeCoster on the permit applications. However, the Option to Purchase and Master Agreement demonstrate that DeCoster has a sufficient level of control over OFE management and the selection of officers, directors, or managers, that OFE should have included DeCoster's name and address on the permit applications.

31. On October 18, 2004, OFE's legal counsel transmitted to ODA a redacted copy of the Option to Purchase Agreement dated December 23, 2003. The Option to Purchase is between Ohio Investments Co., and Ohio Ag Investors, and Hillandale. ODA was not provided a copy of the Option to Purchase, signed or in draft, until counsel for OFE provided a redacted version on October 18, 2004.

32. In addition to the Option to Purchase, OFE's counsel sent a letter to ODA in which counsel asserted that:

a. OFE retains full authority and control of OFE's egg production facility and the optionee's role is limited;

b. The Option to Purchase imposes conditions and/or contractual conditions on OFE similar to the restriction a bank would impose under a loan to protect the bank's interest;

c. The drop in egg prices and the costs incurred by OFE at its facilities have resulted in increased interest and involvement by the optionee to protect his investment.

33. ODA was unaware that a Master Agreement existed until seeing a reference to it in the Option to Purchase. By letter dated November 3, 2004, counsel for OFE provided ODA with a redacted version of the Master Agreement among Ohio Fresh Eggs, LLC, Donald C. Hershey, Ohio Ag Investors, LLC, Fresh Eggs Manager, LLC, Hillandale Farms, LLC, Hillandale Farms of PA, Inc., Croton Construction, LLC, Ohio Investments Co., LLC, the DeCoster Revocable Trust, and Austin J. DeCoster.

34. On January 6, 2005, ODA counsel requested complete and accurate owner and operator information from OFE to allow ODA to properly evaluate the amount of control individuals have at the Croton and Northern facilities.

35. On January 28, 2005, counsel for OFE responded by letter stating that the optionee, Ohio Investments Co., LLC, did not have the contractual right to control or manage OFE or the Croton and Northern Facilities and did not in fact control the management of OFE, or the selection of its officers, directors, or managers. OFE counsel opined that the optionee had a legitimate interest to protect a substantial monetary investment but that the optionee did not control or manage the Croton and Northern facilities.

Extent of DeCoster's Control over the Management of OFE, or the Selection of Officer, Directors, or Managers

36. OFE's assertions beginning in August 2003 that the anonymous purchaser of the Option to Purchase would have no control over the management or the selection of officers, directors, or managers of OFE was inaccurate. The Option to Purchase and

Master Agreement signed by OFE and DeCoster three days after the issuance of the Croton permits, and before the issuance of permits for the Northern facilities, grants DeCoster a level of control over the OFE facilities such that DeCoster is a person who has a right to control or in fact controls management of OFE, or the selection of officers, directors, or managers of OFE. DeCoster's name and address should have been included on the permit applications.

37. The Option to Purchase, gives DeCoster the following authority:
- a. The OFE three-person Management Committee must include a representative designated by DeCoster.
 - b. The expansion of the number of members of the Management Committee of OFE, the replacement of any member of the Management committee or the Manager with any other person or entity must be approved by DeCoster's representative.
 - c. Although OFE's two representatives on the Management Committee elect any replacement for DeCoster's designated representative, DeCoster designates the replacement for whom OFE's representatives must vote.
 - d. OFE's annual budget requires the approval of DeCoster's representative.
 - e. Any borrowing of funds by OFE must be approved by DeCoster's representative.
 - f. The issuance of any additional membership units in OFE, or the grant of any options or rights to acquire additional membership interests in OFE must be approved by DeCoster's representative.
 - g. The employment or termination of any senior management employee with OFE must be approved by DeCoster's representative.
 - h. The sale or transfer of any material assets must be approved by DeCoster's representative.
 - i. The purchase or acquisition by OFE of any material asset of OFE exceeding a redacted cost must be approved by DeCoster's representative.
 - j. The cancellation or modification of the Consulting and Management Agreement or the Marketing and Output Agreement must be approved by DeCoster's representative
 - k. The amendment or modification of the Certificate of Organization or

Operating Agreement of OFE must be approved by DeCoster's representative.

1. DeCoster must be notified of all meetings of the OFE Management committee and of all meetings of the Members of OFE. DeCoster's representative has the right to be present at all meetings. No issue can be voted on at a meeting unless DeCoster was notified that the issue would be on the agenda unless DeCoster waives such notice.
 - m. DeCoster has the power to modify a previously approved annual budget to meet production costs or efficiency needs, or current market conditions.
38. The Master Agreement, also dated December 26, 2003, gives DeCoster the following rights and responsibilities:
- a. For tax purposes, the Option to Purchase is treated as a current sale of all property and DeCoster, through Ohio Investments, Co., will be treated as the owner of 100% of the outstanding membership interests in OFE.
 - b. DeCoster is responsible for supplying OFE with all of OFE's requirements for the acquisition of the Croton and Northern facilities and all working capital.
 - c. All of OFE's business revenues shall be deposited into banks approved by DeCoster.
 - d. OFE will provide weekly cash flow reports to DeCoster.
 - e. DeCoster's representative has unrestricted access to examine the books, records, bank accounts, and statements of OFE during normal business hours with reasonable advance notice.
 - f. DeCoster indemnifies Donald Hershey, OFE, Manager, Ohio Ag, and Hillandale.

Requirement that DeCoster Be Named on the Permit Applications

39. The Option to Purchase states that DeCoster's approval would not be required for necessary expenditures to permit OFE to comply with its environmental and structural commitments to agencies of Ohio and with any consent decrees to which OFE is subject.
40. The Master Agreement states that during the option period, DeCoster shall supply or cause to be supplied to OFE adequate funds to allow OFE to timely finance the improvements required by the State of Ohio and the related Consent Decree.
41. The language in Option to Purchase and the Master Agreement purportedly limiting DeCoster's authority regarding environmental compliance is superficial and does

not negate OFE's obligation to have provided DeCoster's name and address on the permit applications.

42. Given the extensive control and oversight over OFE that the Option to Purchase and the Master Agreement give to DeCoster, OFE falsified the permit applications or misled ODA by failing to include DeCoster on the permit applications and by claiming that the holder of the Option to Purchase was simply a passive investor.

43. The authority over OFE that the Option to Purchase and the Master Agreement give to DeCoster through Ohio Investments, Co., make DeCoster a "person who has a right to control or in fact controls management of the applicant or the selection of officers, directors, or managers of the applicant," within the meaning of ORC Sections 903.02 and 903.03.

44. OFE was required to include DeCoster's name and address on the initial permit applications for the Croton and Northern facilities submitted to ODA in 2003.

History of Substantial Non-compliance with Laws Pertaining to
Environmental Protection

45. If OFE had properly included DeCoster's name on the permit applications, ODA would have required information concerning DeCoster's environmental compliance history prior to the Director's deciding whether to issue the permits.

46. ORC section 903.05 requires that an applicant who has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application must provide information pertaining to the applicant's history of compliance with environmental laws.

47. When the permit applications were submitted by OFE in June 2003, DeCoster had not operated a concentrated animal feeding operation in Ohio for at least two of the five years immediately preceding the submission of the applications.

48. OAC 901:10-1-02 (A)(4) requires, that an applicant provide the following information:

"An application for a permit to install, permit to operate or NPDES permit shall include information on ownership and background, including but not limited to, the following information:

"(a) The name and address of the applicant, of all partners if the applicant is a partnership or all officers and directors if the applicant is a corporation, and of any other person who has a right to control or in fact controls management of the applicant or the selection of officers, directors or managers of the applicant;

" (b) When required by section 903.05 of the Revised Code, each application for a permit to install or permit to operate must contain information on a record of past compliance if the applicant has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application. If the permit to install and the permit to operate are submitted simultaneously as provided in division (A)(9) of section 903.10 of the Revised Code, then the following information is sufficient to satisfy the requirements of the permits:

"(i) A listing of all concentrated animal feeding facilities that the owner or operator of the proposed new or modified concentrated animal feeding facility has operated or is operating in Ohio:

"(ii) A listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating elsewhere in the United States and that are regulated under the Federal Water Pollution Control Act together with a listing of the concentrated animal feeding facilities that the owner or operator has operated or is operating outside the United States:

"(iii) A listing of all administrative enforcement orders issued to the owner or operator, all civil actions in which the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator pleaded guilty or was convicted during the five years immediately preceding the submission of the application in connection with any violation of the federal Water Pollution Control Act, the Safe Drinking Water Act, as defined in section 6109.01 of the Revised Code or any other applicable state laws pertaining to environmental protection that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator has operated or is operating in the United States or with any violation of the environmental laws of another country that was alleged to have occurred or to be occurring at any concentrated animal feeding facility that the owner or operator has operated or is operating outside of the United States. The lists of concentrated animal feeding facilities operated by the owner or operator within or outside this state or outside the United States shall include, respectively, all such facilities operated by the owner or operator during the five-year period immediately preceding the submission of the application."

49. Because DeCoster had not owned or operated a concentrated animal feeding operation in Ohio for at least two of the five year immediately preceding the submission

of the permit application, OFE had an obligation to disclose the following information pursuant to ORC section 903.05 and OAC 901:10-1-02:

- a. DeCoster was classified as a habitual violator pursuant to Iowa Code section 455B.191(7)(1999) by the State of Iowa through the Department of Natural Resources on June 13, 2000 due to continued failure to comply with Iowa's environmental laws.
- b. DeCoster was classified as a chronic violator pursuant to Iowa Code Section 657.11(3)(1999) by the State of Iowa through the Department of Natural Resources on June 13, 2000 due to continued failure to comply with Iowa's environmental laws.
- c. The classification as a habitual violator under Iowa law means that a person has committed three or more violations as described by Iowa Code Section 459.604 [formerly 455B.191 of the Iowa Code, which was transferred to this chapter in 2003, by legislation in 2002], that the violations occurred within the prescribed five-year statutory time period, that the violations included operations of confinement feeding operations, which caused pollution to water of the state, and that the violations were referred to the Iowa attorney general for assessment of civil penalty or court conviction.

50. ODA also would have considered the following additional pertinent information related to DeCoster's history of substantial non-compliance with laws pertaining to environmental protection pursuant to ORC section 903.05:

- a. DeCoster Finishing Unit #3. On July 8, 1999, the Iowa Supreme Court affirmed a Wright County District Court ruling finding Austin J. DeCoster in violation of several statutory and rule provisions at his animal feeding operations. One set of violations resulted from an incident, which occurred on April 27-28, 1995. Spray irrigation of manure from DeCoster Finishing Unit #3 entered a tile line and discharged into an Iowa River tributary. The Environmental Protection Commission referred the matter to the Iowa Attorney General on July 17, 1995. The District Court assessed a civil penalty of \$10,000.00 for two violations resulting from this incident. This incident constitutes at least one violation for the purpose of determining habitual violator status in Iowa.
- b. DeCoster Nursery Unit #3, Sow Unit #1. On March 22, 2000, the Iowa Supreme Court affirmed Wright County District Court rulings finding Austin J. DeCoster in violation of several statutory and rule provisions due to incidents, which occurred during May and November 1996. A break in an old tile line under a lagoon berm at DeCoster Nursery Unit #3 allowed manure in the lagoon to leak into the tile and then discharge into a drainage ditch. Application of manure from Sow Unit #1 on frozen ground resulted in runoff

to a road ditch and tile line intake. The Environmental Protection Commission referred the matters to the Iowa Attorney General on August 19, 1996, and January 22, 1997. The District Court assessed a civil penalty of \$10,000.00 for the violations resulting from these incidents. These incidents constitute at least two violations for the purpose of determining habitual violator status in Iowa.

- c. DeCoster Nursery Unit #4, Nursery Unit #7, Sow Unit #11. On June 13, 2000, the Iowa District Court, Lucas County, approved a Joint Stipulation and Agreement between the State of Iowa and Austin J. DeCoster, which, among other things, resolved DeCoster's appeal of a ruling by the Iowa District Court, Wright County. That ruling found violations of statutory and rule provisions due, among other violations, to manure runoff incidents, which occurred during February and April 1997, and assessed a civil penalty of \$25,000.00. The Environmental Protection Commission referred these matters to the Iowa Attorney General on June 20, 1997, and August 18, 1997. These incidents constitute at least three violations for the purpose of determining habitual violator status in Iowa.
- d. DeCoster Nursery Unit #M-1. On June 13, 2000, the Iowa District Court, Lucas County, issued a Consent Order, Judgment and Decree, which approved a Joint Stipulations and Agreement between the State of Iowa and Austin J. DeCoster. As part of that settlement DeCoster admitted that on or about April 24, 1998, and October 6-11, 1999, manure was not retained at Nursery Unit #M-1 and that the manure was discharged into a water of the state in violation of state law. DeCoster also agreed to pay \$125,000.00 for the admitted violations. The Environmental Protection Commission referred these matters to the Iowa Attorney General on November 16, 1998, and December 20, 1999. These incidents constitute at least three violations for the purpose of determining habitual violator status in Iowa.

51. Paragraphs 49 and 50 above do not necessarily represent an exhaustive list of DeCoster's failures to comply with laws pertaining to environmental protection. Additional failures might have been disclosed by OFE, or discovered by ODA, if OFE had provided information related to DeCoster's involvement with concentrated animal feeding facilities as required.

52. Accurate disclosure by OFE of DeCoster's level of control over OFE would have resulted in the Director denying OFE's permit applications.

53. In addition, accurate disclosure by OFE of DeCoster's history of substantial non-compliance with laws pertaining to environmental protection would have resulted in the Director denying OFE's permit applications.

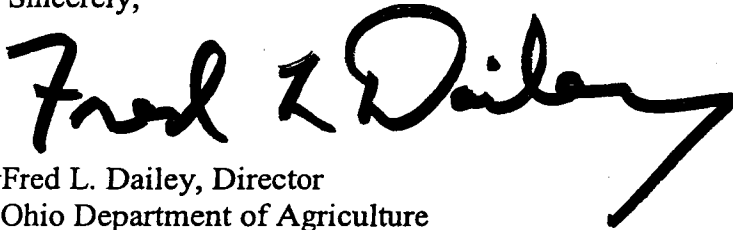
Proposed Order

The Director hereby proposes an order as follows:

1. Based on the foregoing findings, the Director hereby proposes to revoke all permits issued to OFE for the Croton and Northern facilities.
2. By failing to provide the name and address of Austin J. DeCoster on any of the applications, OFE's permit applications contained false or misleading information. Therefore, the Director hereby proposes to revoke all of OFE's permits based on the provision of false or misleading information on the permit applications.
3. In addition, OFE failed to provide information regarding Austin J. DeCoster's history of substantial non-compliance with laws pertaining to environmental protection. Therefore, the Director also proposes to revoke all of OFE's permits based on OFE's failure to provide information to ODA that would have allowed ODA to assess Austin J. DeCoster's history of substantial non-compliance and his lack of sufficient reliability, expertise, and competence to operate a concentrated animal feeding operation.

Be advised that if you fail to request a hearing within 30 days from the mailing of this proposed action, the Ohio Department of Agriculture will issue as a final order the proposed action without a hearing.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is stylized with a large, sweeping "F" and a long, horizontal stroke at the end.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
William J. Hopper, Chief Counsel, ODA
Mary Beth Ruttan, Assistant Attorney General
Jennifer Tiell, Kristen Davidson, ODA Legal Counsel
Cathy Alexander, Ohio EPA
Jim Young, LEPP Inspector
Licking SWCD
Hardin County SWCD
Wyandot County SWCD
File



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette B. Br.
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

September 28, 2005

Monte Tuck
7895 Parker Road
Bloomville, OH 44818

Certified Mail

Re: **Warning Letter**

Dear Mr. Tuck,

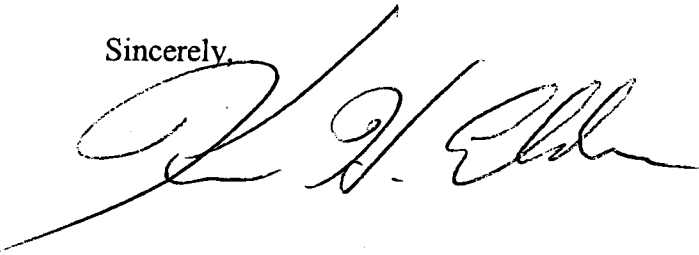
Be advised that due to your failure to cooperate with the Crawford Soil and Water Conservation District, you are required to obtain a Permit to Operate from ODA. If ODA finds that your facilities are inadequate to manage the current number of animals and manure at your operation, you will also be required to obtain a Permit to Install. As stated in the last letter we sent, you must have both pits entirely cleaned out by November 1, 2005. Since your hogs have recently gone out and you do not have adequate manure storage, no more hogs can be stocked into the barns until both pits are entirely empty. You should call us and setup an inspection prior to restocking. ODA will also not allow an expansion of your farm until you have a proven track record of adequately operating your current farm. If needed, ODA personnel can assist you with the PTI/PTO process. As an alternative, you may be required to close your operation.

You are required to submit an application for a Permit to Operate in order to comply with O.R.C. Section 903.082. An application shall be submitted by January 2, 2006, to the attention of Kevin Elder, Executive Director, Livestock Environmental Permitting Program, at 8995 East Main Street, Reynoldsburg, Ohio 43068. Thereafter, you will have 60 days to respond to comments made by LEPP on the permit application submitted and reviewed by LEPP. In the event that LEPP performs a second review of the permit application, you will have an additional 30 days to respond to comments made by LEPP in order to obtain the necessary permit as expeditiously, as possible, subject to the public participation requirements of O.R.C. Section 903.09.

Enclosed please find a copy of the Final Inspection for the inspection conducted on September 18, 2005. I urge you to read this report carefully. You are required to do all the actions listed by the inspector in the attached report on page 22 under the Summary. ODA expects all swine finishing facilities in ODA's jurisdiction to comply with all items listed in this inspection report and swine finishers in this program have a positive record of compliance. We expect the same from you.

If you have any questions, do not hesitate to call me at 614 387-0469.

Sincerely,

A handwritten signature in black ink, appearing to read "K. H. Elder", written in a cursive style.

Kevin H. Elder
Executive Director, Livestock Environmental Permitting Program

cc: Chris Rodabaugh, LEPP Inspector
Andy Rogowski, LEPP Engineer
✓ Jennifer Tiell, ODA Legal Counsel
John Kessler/ Mike Nishimura, ODNR-SWCD
Crawford SWCD



Ohio Department of Agriculture



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September 20, 2005

Monte Tuck
7895 Parker Road
Bloomville, OH 44818

Certified Mail

Re: Warning Letter

Dear Mr. Tuck,

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on September 19, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program measured the freeboard allowance at your facility and found no freeboard remaining.

The following are the rules at issue:

Rule 901:10-2-05 of the Administrative Code provides, in pertinent part, at paragraph (A)(4):

“(4) Freeboard.

A fabricated structure shall be designed and maintained to have an operating level that does not exceed the level that provides adequate storage to contain a precipitation event plus six inches of freeboard...”

Rule 901:10-2-05 of the Administrative Code provides at paragraph (A)(5):

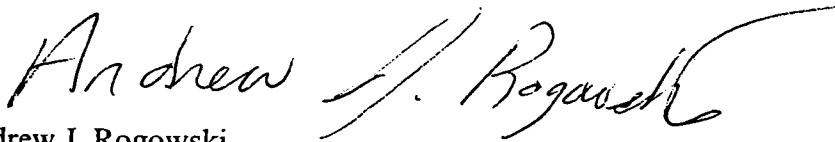
“(5) Fabricated structures for liquid manure shall have a liquid level board, staff gauge, depth marker, or other appropriate device approved by the director, installed within the interior to monitor manure levels.

During the site visit, ODA staff observed that your pits were full and did not have adequate freeboard. You must take immediate action to lower the manure level in both barns. When you begin to haul manure, please adequately agitate both barns to mix the solids. If this does not adequately mix the solids you will need to find a way to remove the solids. You may want to try a pit additive similar to the one that Rodger Rader used to break up a solids problem in their pit. Removal of all manure from both barns shall be top priority. ODA staff will be out on Monday, October 3rd to check on your manure hauling progress. Please take soil samples from all fields that will be receiving manure prior to your application this fall. After this we will periodically check your manure hauling progress to ensure the pits are emptied by November 1st. When you are applying manure, check tiles regularly to ensure no manure is entering the tiles.

The November 1st date is critical if you are to avoid winter application of manure. ODA agrees with U.S. EPA, Ohio EPA, and the Ohio Department of Natural Resources that surface application of manure is only for emergencies. You have sufficient time to plan so that you will not have an emergency.

If you have any questions, do not hesitate to call me at 614 728-9213.

Sincerely,

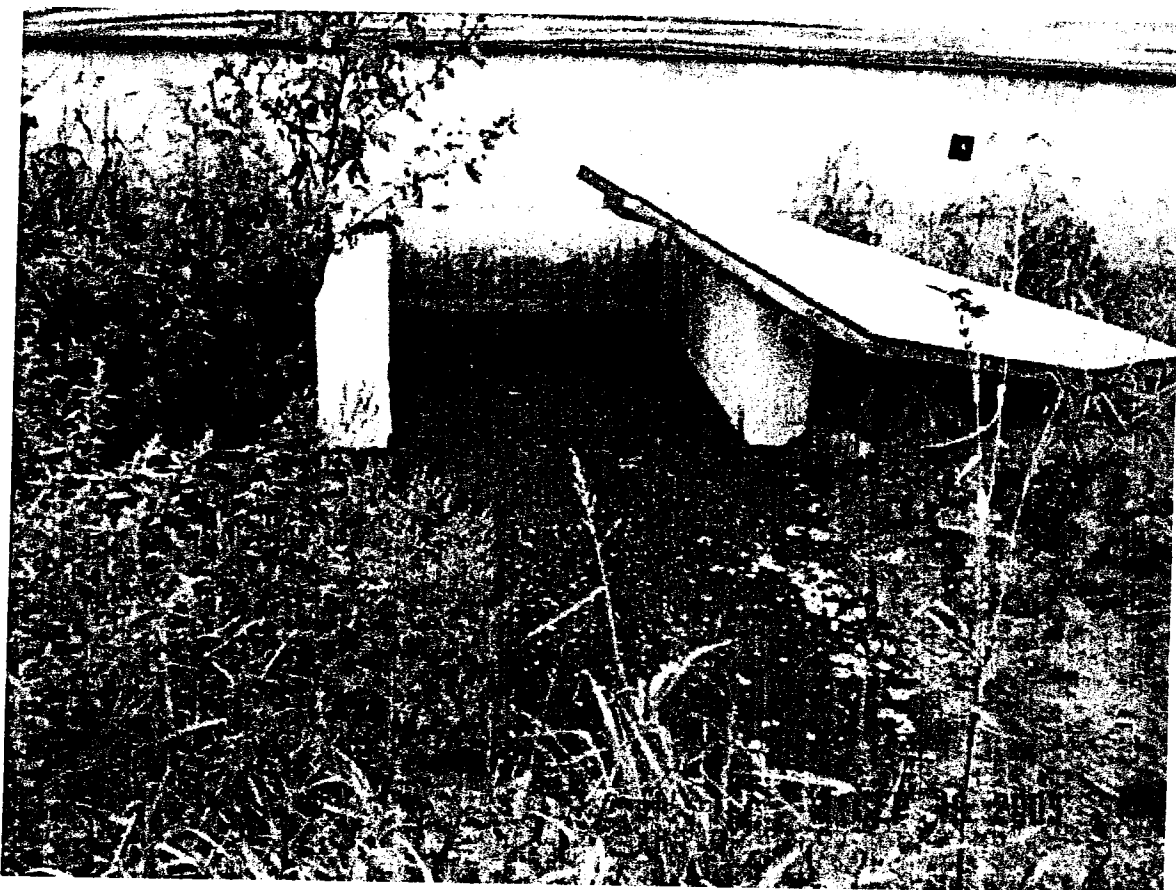
A handwritten signature in cursive script, reading "Andrew J. Rogowski". The signature is fluid and extends across the width of the line.

Andrew J. Rogowski
Livestock Environmental Permitting Program Engineer

cc: Kevin Elder, Executive Director, LEPP
Chris Rodabaugh, LEPP Inspector
John Kessler/ Mike Nishimura, ODNR-SWCD
Crawford SWCD



Barn 1 - full pit shown with liquid feed waste in manure, 9/19/05



Barn 2 – full pits, 9/19/05



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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September 9, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1 and Croton Pullet Site No. 1. ODA has determined that, by failing to comply with the Insect and Rodent Control Plan (IRCP) contained in the PTOs, that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

I. FIRST VIOLATION: FAILURE TO TREAT MANURE PRIOR TO REMOVAL FROM BARN.

A. VIOLATION

ODA has determined that the Consent Order and terms and conditions in the Permit to Operate issued for OFE Croton Layer No.1 and the PTO issued for OFE Croton Pullet No. 1 have been violated. Specifically, the IRCP portions of the PTOs require OFE to treat all manure with an appropriate insecticide prior to removal from barns. During an

inspection on August 12, 2005, an inspector from ODA's Livestock Environmental Permitting Program (LEPP) found a manure stockpile located in a field on OFE property behind Croton Layer No. 4. On August 17, 2005, an inspector found two additional manure stockpiles located in fields belonging to the Clever farm on Foundation Road in Licking County. These two manure stockpiles are identified as Clever East #4 and Clever West #5. The LEPP inspector learned that the manure in these stockpiles originated as OFE Croton Layer No. 1 and Pullet No. 1. There were abundant to extreme levels of flies and larvae observed on the manure of all stockpiles.

B. CORRECTIVE ACTIONS

OFE is required to comply immediately with the terms and conditions of the PTO issued for Croton Layer No. 1 and the PTO issued for Croton Pullet No. 1 by treating all manure with an appropriate insecticide prior to the manure leaving the barns.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E), ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D) and (J). Based upon this review, ODA has determined that the violations cited herein are first violations with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$7,500.00 per week for one week, for a total of \$7,500.00 and the potential for escalated enforcement, including an assessment of \$7,500.00 for each week hereafter for noncompliance with the Corrective Action listed above.

II. SECOND VIOLATION: FAILURE TO MONITOR MANURE STOCKPILES AND TO TREAT FOR FLY ACTIVITY.

A. VIOLATION

ODA has determined that the Consent Order and terms and conditions in the PTO issued for OFE Croton Layer No.1 and the PTO issued for OFE Croton Pullet No. 1 have been violated. Specifically, the IRCP portions of the PTOs require that, if a manure stockpile has abundant to extreme insect populations, OFE monitor the stockpiles every other day for beetle and fly activity until activity has subsided. OFE is required to apply insecticide as necessary to reduce insect populations sufficiently to "few" for imminent land application activities. OFE shall monitor manure stockpiles between applications for pest activity. OFE shall not land apply the stockpiled manure until insect activity has subsided, or when an insecticide can be applied with manure as manure is land applied.

On August 15, 2005, an inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program found a manure stockpile located in a field on OFE property behind Croton Layer No. 4. There were abundant to extreme levels of flies and larvae on and around the stockpiles that swarmed in the fields adjacent to the stockpile. The ODA inspector learned that the manure originated at Ohio Fresh Eggs Croton Layer No. 1 and Pullet Site No. 1.

On August 17, 2005, an inspector from the Ohio Department of Agriculture Livestock Environmental Permitting Program conducted a complaint investigation in the fields south of Foundation Road and east of Downing Road. The inspector found two manure stockpiles located in fields belonging to the Clever farm on Foundation Road in Licking County. The manure stockpiles are identified as Clever East #4 and Clever West #5. There were abundant to extreme levels of flies and larvae on and around the stockpiles that swarmed in the fields adjacent to the stockpiles. The ODA inspector learned that the manure in these two stockpiles originated at Ohio Fresh Eggs Croton Layer No. 1 and Pullet Site No. 1.

B. CORRECTIVE ACTIONS

- 1) OFE is required to treat the manure stockpiles at Layer Site No. 4 and at the Clever Farm with insecticide to kill insects when pest insect populations in the manure surface from this stockpile.
- 2) OFE shall monitor the manure stockpile at Layer Site No. 4 and both of the stockpiles on the Clever Farm every other day for pest activity until pest activity has subsided, provided further that insecticide treatment shall continue until pest populations have been reduced sufficiently to "few".
- 3) Once the pest populations have been reduced to few, OFE shall monitor both stockpiles for pest activity every week until such time as the manure stockpiles are removed for land application or some other approved method of disposal.
- 4) OFE shall conduct all activities listed in 1) through 3) above until the manure stockpiles are removed for land application or some other approved method of disposal. The manure stockpiles shall be eliminated no later than October 1, 2005 at which time ODA will inspect the stockpile sites to determine if OFE has returned to compliance.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D) and (J). Based upon this review, ODA has determined that the violations cited herein are first violations with the category of seriousness of the violations as moderate or Category II and the gravity of the violations as high. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action

required herein, OFE or its owners and/or operators would be subject to the assessment of civil penalty in the amount of \$7,500.00 per week for one week, for a total of \$7,500.00, and the potential for escalated enforcement, including an assessment of \$7,500.00 for each week hereafter for noncompliance with the Corrective Actions listed.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Fred L. Dailey". The signature is stylized with a large, looped "F" and a long, sweeping underline that extends to the right.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell/Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft
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September 2, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Mt. Victory Layer Site No. 5. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY
INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS
REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for

Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE conduct weekly inspections of the barns and that OFE complete operating records documenting the weekly inspections.

Specifically, OFE's IRCP requires that a Compliance Officer inspect each pit once per week. The inspection is to be recorded on the Pit Insect Inspection Report (FEM-5 form). In addition, the Site Production Manager is required to evaluate FEM-5 forms, record corrective actions taken on the FEM-5 forms, and sign the FEM-5 forms. On June 13, 2005, ODA requested that OFE provide the FEM-5 Pit Inspection Report forms from the Operating Records maintained at the Mt. Victory facilities from April 1, 2005 to June 14, 2005.

ODA has determined that from at least April 5, 2005 through June 8, 2005, OFE's Compliance Officer and Site Production Manager failed to record the results of the weekly inspections on the Pit Insect Inspection Reports (FEM-5 forms) that are included in and required by OFE's PTO. Further, Jim Pitsenberger is not a Compliance Officer or a Site Production Manager but completed the FEM-5 forms.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE's Compliance Officer is required to immediately begin conducting the required weekly inspections. The results of the weekly inspections shall be recorded on the FEM-5 form as contained in the PTO. The FEM-5 forms shall thereafter be maintained in the Operating Record. In addition, the Site Production Manager is required to immediately begin evaluation of the weekly inspection of each manure pit, ensure that the appropriate corrective actions are taken, and sign his name to the form.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 9 weeks, for a total of \$22,500.00, and the potential for escalated enforcement.

II. SECOND VIOLATION: FAILURE TO UTILIZE THE BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTION FORMS

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Mt. Victory Layer Site No. 5 (OFMT-0001.PO001.HARD) requires that OFE's management team conduct bi-weekly pit inspections of the barns from November through April and monthly pit inspections from May through October. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

The PTO requires that the results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Management Team Walk-Through Report (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

ODA reviewed the Management Walk-Through Reports (FEM-6) that are required pursuant to the IRCP for the period of April 5, 2005 through June 8, 2005. The records show that pit inspections were conducted by Cale Ayres or by Harry Palmer. None of individuals conducting the pit inspections used the FEM-6 forms that are included in and required by OFE's PTO.

ODA has determined that from the period of April 5, 2005 through June 8, 2005, OFE's Management Team failed to complete the Management Walk-Through Reports (FEM-6 forms) as required by OFE's PTO.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the correct FEM-6 form, and implementing the action items required to correct any deficiency noted on the FEM-6 form.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 bi-weekly or \$5,000.00

for April 2005 and \$2,500 per month for May and June 2005 (\$5, 000) for a total of \$10,000.00 and the potential for escalated enforcement.

By September 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$32,500.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Fred L. Dailey". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Howard Lyle, Hardin SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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September 2, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Marseilles Layer Site No. 6. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY
INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS
REQUIRED BY THE INSECT AND RODENT CONTROL PLAN**

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for

the Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN) requires that OFE conduct weekly inspections of the barns and that OFE complete operating records documenting the weekly inspections.

Specifically, OFE's IRCP requires that a Compliance Officer inspect each pit once per week. The inspection is to be recorded on the Pit Insect Inspection Report (FEM-5 form). In addition, the Site Production Manager is required to evaluate FEM-5 form, reports, record corrective actions taken on the FEM-5 form, and sign the FEM-5 form.

On June 13, 2005, ODA requested that OFE provide the FEM-5 Pit Inspection Report forms from the Operating Records maintained at the Marseilles facilities from April 1, 2005 to June 14, 2005.

ODA has determined that from at least April 7, 2005 through June 14, 2005, OFE's Compliance Officer and Site Production Manager failed to record the results of the weekly inspections on the Pit Insect Inspection Reports (FEM-5 forms) that are included in and required by OFE's PTO. Further, Jim Pitsenberger is not a Compliance Officer or Site Production Manager but completed the FEM-5 forms.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE's Compliance Officer is required to immediately begin conducting the required weekly inspections. The results of these inspections shall be recorded on the FEM-5 form as contained in the PTO. The FEM-5 forms shall thereafter be maintained in the Operating Record. In addition, the Site Production Manager is required to immediately begin evaluation of the weekly inspection of each manure pit, ensure that the appropriate corrective actions are taken, and sign his name to the form.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 10 weeks, for a total of \$25,000.00 and the potential for escalated enforcement.

II. SECOND VIOLATION: FAILURE TO UTILIZE THE BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTION FORMS

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Marseilles Layer Site No. 6 (OFMA-0001.PO001.WYAN) requires that OFE's management team conduct bi-weekly pit inspections of the barns from November through April and monthly inspections from May through October. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

The PTO requires that results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Management Walk-Through Report (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

ODA reviewed the Management Walk-Through Reports (FEM-6) that are required pursuant to the IRCP for the period of April 7, 2005 through June 14, 2005. The records show that pit inspections were conducted by Cale Ayres or by Harry Palmer. None of individuals conducting the pit inspections used FEM-6 on the forms that are included in and required by OFE's PTO.

ODA has determined that from the period of April 7, 2005 through June 14, 2005, OFE failed to record the Management Walk-Through Reports on the forms FEM-6 forms) required by OFE's PTO.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections with the FEM-6 form approved in the PTO, and implementing the action items required to correct any deficiency noted on the FEM-6 form.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of

seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 bi-weekly or \$5,000.00 for April 2005 and \$2,500 per month for May and June 2005, for a total of \$10,000.00 and the potential for escalated enforcement.

By September 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$35,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Fred L. Dailey". The signature is fluid and cursive, with the first name "Fred" and last name "Dailey" clearly legible.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jeff Hohman, Wyandot SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Bruce Johnson
Director Fred L. Dailey

Livestock Environmental Permitting Program
8995 East Main Street • Reynoldsburg, Ohio 43068
Phone: 614-387-0470 • Fax 614-728-6335

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

September 1, 2005

Sheldon Farms
C/o Kurt Sheldon
10736 SR 701
Kenton, Ohio 43326

Certified Mail Return Receipt Requested

Re: Warning Letter

Ohio EPA Permit #08-006-SW

Ohio Department of Agriculture Review Compliance Certificate

#SHEL-0001.RC001-HARD

Mr. Sheldon:

Violation of Ohio Department of Agriculture laws and rules was discovered during an inspection by my staff on August 4, 2005. On that date, staff from the Ohio Department of Agriculture Livestock Environmental Permitting Program found that manure from each of your four barns had not been sampled as is required by Rule 901:10-2-10 of the Ohio Administrative Code.

1. Need for annual manure analysis.

Rule 901:10-2-10 of the Ohio Administrative Code (OAC) provides at paragraphs (C) and (D):

“(C) At a minimum, manure from each manure storage or treatment facility shall be analyzed annually for the following: total nitrogen; ammonium nitrogen; organic nitrogen; phosphorus; potassium; and percent total solids. Such an analysis may characterize process wastewater if needed and may also be based on an actual manure sample from the facility, a similar facility or on existing published or documented data.

“(D) Results of analyses and estimates conducted in paragraphs (A) to (C) of this rule shall be recorded in the operating record.”

Our records show that prior to this most recent inspection, you were told at the November 12, 2004 inspection that manure analysis was needed. To avoid a Notice of Deficiencies Resulting in Violation, please follow the instructions of the LEPP Inspector to take

samples from all four barns and place the sample results in your Operating Record before a re-inspection after October 30, 2005. Other improvements are needed for your operation, including your annual water sample, but failure to have the manure samples is a repeat violation. Please assure that at that the re-inspection the item noted in this letter is addressed. We take these violations very seriously and anticipate your prompt correction of the aforementioned violations. If the subsequent inspection indicates the continuance of the violation noted this could result in the commencement of enforcement actions against you and the possibility of monetary penalties.

Sincerely,

A handwritten signature in black ink, appearing to read "K. H. Elder", written over a horizontal line.

Kevin H. Elder
Executive Director
Livestock Environmental Permitting Program

Cc: Andy Ety, LEPP Engineer
Chris Rodabaugh, LEPP Inspector
Jennifer Tiell, Legal Counsel
Hardin County SWCD
Cathy Alexander, Ohio EPA

**Ohio Department of Agriculture
State of Ohio**

In re: Ohio Fresh Eggs, LLC

Emergency Order No: 2005-243
Croton Layer Site No. 1
OFL1-0001.PO001.LICK

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Mohamed Mousa Aboughazala
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Brian M. Babb, Esq.
Attorney of Record
Keating, Muething & Klekamp PLL
1400 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202

Emergency Order

The Ohio Department of Agriculture (ODA) completed a total inspection of Ohio Fresh Eggs, LLC's (OFE) Croton Layer No. 1 facility on August 8, 2005. During this inspection, the inspector physically inspected and observed the conditions in all of the barns currently in operation at Croton Layer No. 1, barns 2, 4, 6, 8, 10, 12, 13A, and 14B. The inspector personally observed and recorded evidence of abundant to extreme levels of flies in and around the barns listed above. Pursuant to ODA's authority under Section 903.18 of the Ohio Revised Code (ORC), the Director has determined that an emergency exists requiring immediate action to protect the public health or safety or the environment. OFE is hereby ordered to comply immediately with this Emergency Order.

Findings of Fact and Conclusions of Law

1. On August 8, 2005, an ODA inspector for the Livestock Environmental Permitting Program conducted an inspection of Croton Layer Site No.1. The inspector conducted physical inspections of all barns in operation (barns 2, 4, 6, 8, 10, 12, 13A and 14B) and observed conditions within these barns. The inspector also reviewed the Operating Records that are required to be kept according to Ohio Administrative Code (OAC) 901:10-2-16 and made the following findings:
 - a. Water leaks occurred on July 15, 2005 at barns 8 and 12 and were reported on form FEM-3.
 - b. Water leaks occurred on July 18, 2005 at barns 8 and 12 and were reported on form FEM-3. In addition, water loss attributable to leaks occurred at barns 6 (9 gallons) and 10 (3 gallons) on July 18, 2005 for a total of approximately 12 gallons over a twelve-hour period.
 - c. On July 19, 2005, the water loss attributable to leaks occurred at barns 2 (12 gallons), 6 (52 gallons), 8 (26 gallons), 10 (37 gallons), and 12 (6 gallons) at a total of approximately 133 gallons over a twelve-hour period.
 - d. Water leaks occurred on July 20 and 21, 2005 for barns 2, 4, 6, 8, 10, and 12 and were reported on form FEM-3. In addition, on July 20, 2005, water loss attributable to leaks occurred at barns 2 (19 gallons), 4 (45 gallons), 6 (38 gallons), 8 (29 gallons), 10 (31 gallons), and 12 (11 gallons) for a total of approximately 172 gallons over a twelve-hour period.
 - e. Water leaks occurred on July 22, 2005 at barn 10 and were reported on form FEM-3.
2. On August 8, 2005, the ODA inspector personally observed water leaking onto the manure belts at barns 2, 4, 6, and 8.
3. During a February 11, 2005 inspection, OFE informed the inspector that water leaks would be repaired by installing new regulators in the water lines. OFE also indicated that the new regulators were already on-site in the warehouse of OFE.
4. During the inspection on August 8, 2005, the inspector determined that OFE had failed to install the regulators.
5. During the inspection on August 8, 2005, the inspector determined that the most recent records of corrective actions to repair water leaks showed two repairs on December 4, 2004 at barn 13A.
6. OFE has failed to produce any records to demonstrate that any water leaks or water losses have been repaired since December 4, 2004.

7. At OFE Croton Layer Site No. 1, OFE failed to conduct daily inspections in barns 2, 4, 6, 8, 10, 12, 13A and 14B at Croton Layer Site No. 1 to locate, record, and repair water leaks immediately and to report the daily inspections on Form FEM-3.
8. OFE has failed to repair all water leaks immediately as required by the Insect and Rodent Control Plan (IRCP) of the Permit to Operate (PTO or "permit") OFL1-0001.PO001.LICK issued to OFE by ODA.
9. During the inspection on August 8, 2005, the inspector determined that barns 2, 4, 6, 8, 10, 12, 13A and 14B at Croton Layer No. 1 contained wet manure and allowed fly breeding resulting in abundant to extreme levels of flies. As set forth in the PTO, an abundant level of flies means that more than five flies are clustered per square foot. As set forth in the PTO, an extreme level of flies means that flies are dense and clustered in hundreds per square foot.
10. Based on a review of the Manure Management Manifest records submitted to ODA, OFE has failed to treat all manure with insecticides prior to removal from the barns for a period from May 2, 2005 to August 8, 2005, as required by the PTO.
11. OFE has failed to maintain manure at 30% moisture level or less at barns 2, 4, 6, 8, 10, 12, and 14B in order to suppress fly and fly larval development as required in the IRCP. Moisture in manure shall be managed in accordance with an approved IRCP of the PTO in order to minimize the presence and level of pest activity as set forth in OAC 901:10-2-19(B)(3)(a)(iv).
12. Immediate action is necessary to prevent abundant to extreme levels of flies at Croton Layer No. 1 from migrating to nearby residences and to protect public health or safety.

Orders

1. An emergency exists that requires immediate action to protect the public health or safety or the environment.
2. OFE shall immediately commence corrective actions by means of insecticide controls in order to reduce fly levels at all barns at Croton Layer No. 1 to "few" as that term is defined in the permit and the IRCP of the PTO. **These corrective actions shall utilize the actions set forth in the IRCP for fly levels at 50-74: Two actions shall be performed; either baiting using granular bait, or space sprays, or spray on walls, or spray directly on manure, or spray fungus. The Site Production Manager chooses two actions and must have the actions taken recorded in the Operating Record on Form FEM-4 Pesticide**

Application Log. These actions shall be complete within 24 hours of the receipt of these Emergency Orders.

3. OFE shall immediately inspect, identify, and repair all water leaks at barns 2, 4, 6, 8, 10, 12, 13A and 14B at Croton Layer No. 1 and **shall complete repairs within 48 hours of the receipt of these Emergency Orders.**
4. OFE shall immediately commence corrective actions to treat all manure with insecticides prior to removal from the barns and otherwise comply with all terms and conditions of the PTO.
5. For the duration of this Emergency Order, OFE shall control and maintain fly levels at the level of "few" as defined in the IRCP; inspect for water leaks daily and repair leaks immediately; and maintain manure at the 30% moisture level or less or remove manure in exceedance of this limit at all permitted facilities at Croton.
6. OFE shall comply with all terms and conditions contained in the permits, with all terms and conditions in the March 1, 2001 Consent Order, and with all applicable laws and regulations.
7. The Emergency Order shall take effect immediately and shall be in effect for 120 days unless earlier withdrawn by the Director.
8. OFE shall comply immediately with these Orders.

Effective Date of this Order: Upon journalization.

IT IS SO ORDERED:


Fred L. Dailey, Director

10 August, 2005
Date

CERTIFICATION

STATE OF OHIO,
COUNTY OF LICKING, SS

:
:

Order No. 2005-243

I, Fred L. Dailey, Director, Ohio Department of Agriculture, do hereby certify that the annexed instrument is a true and correct copy of EMERGENCY ORDER 2005-243, which was entered upon the order journal of the Ohio Department of Agriculture on this 10th day of August 2005.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Ohio Department of Agriculture at Columbus, Ohio, this 10th day of August, 2005.


Fred L. Dailey, Director
Ohio Department of Agriculture



NOTICE OF APPEAL RIGHTS

This EMERGENCY ORDER takes effect immediately. The EMERGENCY ORDER may be appealed. Pursuant to Ohio Revised Code Chapter 119, you have the right to request a formal hearing should you disagree with the EMERGENCY ORDERS. Any request for hearing must be made to the Ohio Department of Agriculture, Attention: William A. Hopper, Legal Section, 8995 East Main Street, Reynoldsburg, Ohio 43068-3399, telephone (614) 728-6430. Your request for a hearing must be received by the Ohio Department of Agriculture within thirty days of the date of mailing of this notice. This notice is being mailed to you on August 10, 2005.

Please note that if your company is a corporation or a limited liability company, only an attorney at law admitted to practice in the State of Ohio may represent a corporation or a limited liability company at the hearing. A court reporter will be present to make a record of the proceedings and swear in any witnesses who are called.

You may present evidence and examine witnesses appearing for and against you, to show cause why these Emergency Orders should not be ordered against you. At the conclusion of the hearing, the hearing officer will prepare a report and recommendation and will submit the report to the Director of Agriculture for consideration.



Ohio Department of Agriculture



Governor Bob Taft

Lieutenant Governor Jennette Bradley

Director Fred L. Dailey

Administrative Office:

8995 East Main Street • Reynoldsburg, Ohio 43068-3399

Phone: (614) 466-2732 • Fax: (614) 466-6124

ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

August 9, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Mohamed Mousa Aboughazala
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Re: **DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN NONCOMPLIANCE**

Gentleman:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs, LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer Site No. 1. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 1 (OFL1-0001.PO001.LICK) requires that OFE conduct weekly inspections of the barns and that OFE complete operation records documenting the inspections.

Specifically, OFE's IRCP requires that a Compliance Officer inspect each pit once per week. The inspection is to be recorded on the Pit Insect Inspection Report (FEM-5 form). In addition, the Site Production Manager is required to inspect each manure pit weekly and as necessary as indicated by the FEM-5 form.

During an inspection on March 9, 2005, the ODA Livestock Environmental Permitting Program (LEPP) inspector found that the weekly inspections to be conducted and the FEM-5 forms to be completed by the Compliance Officer and the Site Production Manager had not been performed from November 4, 2004 through March 9, 2005.

ODA has determined that from at least November 4, 2004 through March 9, 2005, OFE's Compliance Officer and Site Production Manager failed to conduct the weekly inspections and to complete the Pit Insect Inspection Reports (FEM-5 forms) as required by OFE's PTO.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit and maintain records in the Operating Records.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement.

II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued to OFE by ODA. The Insect and Rodent Control Plan (IRCP) contained in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 1 (OFL1-0001.PO001.LICK) requires that OFE's management team conduct bi-weekly pit inspections of the barns. The management team is defined in the permit as the Site Production Manager, the Senior Production Manager, the Compliance Department Manager, and the Director of Operations.

According to the permit, from November through April, the Management Team shall conduct the bi-weekly pit inspections. The results of these inspections shall be recorded on the Pit Insect Inspection Report (FEM-5 form). Based on the Management Team's assessment of conditions outlined in the IRCP and recorded on the FEM-5 form, the Management Team will record action items on the Pit Insect Inspection Report- Notes and Required Actions (FEM-6 form). The Action Items recorded on the FEM-6 form will be implemented immediately to correct deficiencies. In addition, a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA listing Mohammed Mousa as the Assistant General Manager, Chris Art as the Production Manager, Allen Hildenbrandt as the Processing Manager, and Stephanie Tudor as the Compliance Officer at OFE Croton, which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6) that are required pursuant to the IRCP for the period of November 4, 2004 to March 9, 2005. The records show that pit inspections were conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to ODA), Gavino (last name unavailable to ODA), and Benancio Nolasco-Ramos. None of individuals conducting the pit inspections are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, Compliance Department Manager, or Director of Operations at Croton Layer No. 1.

ODA has determined that from November 4, 2004 through March 9, 2005, OFE's Management Team failed to conduct bi-weekly inspections and to complete the Pit Insect Inspection Reports- Notes and Required Actions (FEM-6 forms) as required by OFE's PTO.

B. CORRECTIVE ACTION REQUIRED

Upon receipt of this letter, OFE is required to immediately ensure that the Management Team is conducting the required inspections, completing the appropriate forms, and implementing the action items required to correct any deficiency.

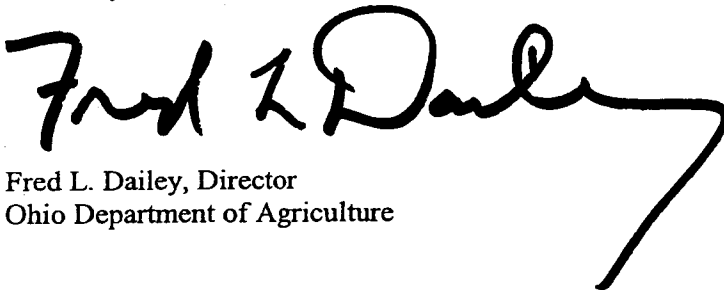
C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement.

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules and the Consent Order by complying with the PTO. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to \$90,000.00 and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

Administrative Offices
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August 9, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Mohamed Mousa Aboughazala
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer No. 2. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE INSECT AND RODENT CONTROL PLAN

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 2 (OFL2-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Croton Layer No. 2 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Layer No. 2.

B. CORRECTIVE ACTION REQUIRED

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA

has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS

A. VIOLATION

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Layer No. 2.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Layer No. 2, which ODA construes as the individuals and titles of persons of the OFE Management Team.

B. CORRECTIVE ACTION REQUIRED

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

By August 30, 2005, an ODA inspector will inspect your facility to determine whether you have returned to compliance with ODA's rules. If OFE, its owners and/or operators have failed to comply with any of the corrective actions required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty up to **\$90,000.00** and the potential for escalated enforcement. We take these violations very seriously and anticipate that the aforementioned violations will be promptly corrected.

Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Fred L. Dailey". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
Jennifer Tiell, Kristen Davidson, Legal Counsel, Ohio Department of Agriculture
Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD



Ohio Department of Agriculture



Governor Bob Taft
Lieutenant Governor Jennette Bradley
Director Fred L. Dailey

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ODA home page: www.state.oh.us/agr/ • e-mail: agri@odant.agri.state.oh.us

August 9, 2005

Donald Hershey
Ohio Fresh Eggs LLC
9300 Croton Road
Croton, Ohio 43013

Certified Mail

Orland Bethel
Hillandale Farms, Inc.
3rd Street and Crooked Run Road
North Versailles, PA 15137

Certified Mail

Ronald L. Flory
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

Mohamed Mousa Aboughazala
Ohio Fresh Eggs Manager LLC
11212 Croton Road
Croton, Ohio 43013-0173

Certified Mail

**Re: DIRECTOR'S NOTICE OF DEFICIENCIES RESULTING IN
NONCOMPLIANCE**

Gentlemen:

Pursuant to Ohio Department of Agriculture's (ODA) authority under Section 903.16 of the Ohio Revised Code (ORC), Ohio Fresh Eggs LLC (OFE) is hereby issued a Notice of Deficiencies Resulting in Noncompliance (NOD) for the Croton Layer No. 3. ODA has determined that OFE has failed to comply with Ohio Administrative Code (OAC) 901:10-1-10(F) and certain requirements set forth in paragraph 8 of the March 2001 Consent Order in State v. Buckeye Egg Farm, LP, Licking County Common Pleas Case No. 99- CV-756.

**I. FIRST VIOLATION: FAILURE TO CONDUCT WEEKLY INSPECTIONS
AND TO COMPLETE OPERATION RECORDS AS REQUIRED BY THE
INSECT AND RODENT CONTROL PLAN**

A. VIOLATION

OAC 901:10-1-10(F) and Paragraph 8 of the Consent Order require OFE to comply with the terms and conditions contained in the permits issued by ODA. ODA has determined that the terms and conditions in the Permit to Operate (PTO) issued to OFE for Croton Layer Site No. 3 (OFL3-0001.PI001.LICK) have been violated. First, based on an analysis of records reviewed by ODA, ODA has determined that OFE has failed to comply with the Insect and Rodent Control Plan from at least November 4, 2004 to March 9, 2005. Specifically, ODA has determined that OFE has failed to comply with Weekly Inspection & Operations Records that shall be conducted and completed by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms).

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildebrand, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton.

ODA reviewed Pit Insect Inspection Reports (FEM-5), required pursuant to the IRCP Daily House Inspections and Weekly Inspections & Operations Records that shall be conducted and completed at Layer No. 3 by a Compliance Officer and by the Site Production Manager utilizing the Pit Insect Inspection Reports (FEM-5 forms) for the period of November 4, 2004 to March 9, 2005.

The records show that weekly pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as Site Production Manager, Production Manager, or Compliance Officer at Croton Layer No.3.

B. CORRECTIVE ACTION REQUIRED

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators

fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

II. SECOND VIOLATION: FAILURE TO COMPLY WITH BI-WEEKLY MANAGEMENT TEAM PIT INSECT INSPECTIONS

A. VIOLATION

ODA has determined that OFE has failed to comply with Bi-Weekly Management Team Pit Insect Inspections where the management team is defined in the permit.

According to the permit, the Management Team shall conduct the bi-weekly pit inspections and, based upon the Management Team assessment of conditions outlined in the IRCP and recorded on Form FEM-5, action items recorded by the Management Team on Form FEM-6 will be implemented immediately to correct deficiencies, and a review of management procedures will be performed to prevent future deficiencies in the integrated pest management program.

By letter dated February 14, 2005, OFE submitted a Table of Organization to ODA that listed Mohammed Mousa, Assistant General Manager, Chris Art, Production Manager, Allen Hildenbrandt, Processing Manager, and Stephanie Tudor, Compliance Officer, at OFE Croton Layer No. 3 which ODA construes as the individuals and titles of persons of the OFE Management Team.

ODA reviewed the Pit Insect Inspection Reports (P2R or FEM-6) Management Walk Through are required pursuant to the IRCP Bi-Weekly Management Team Pit Insect Inspections for the period of November 4, 2004 to March 9, 2005. OFE. The records show that pit inspections are conducted by Jim Pitsenberger, Juan Guzman, Sergio Santellano, Raul (last name unavailable to LEPP), Gavino (last name unavailable to LEPP), and Benancio Nolasco-Ramos none of whom are listed or otherwise described as part of the Management Team or as a Site Production Manager, Senior Production Manager, or Compliance Department Manager or Director of Operations at Croton Layer No. 3.

B. CORRECTIVE ACTION REQUIRED

OFE is required to immediately commence with the required inspections to be conducted by the correct personnel as stated in the permit.

C. PENALTY ASSESSMENT

Pursuant to OAC 901:10-5-03(E) ODA shall assess penalties commensurate with the nature and degree of the violation and in accordance with OAC 901:10-5-04. In determination of the amount of penalty to be assessed in this matter, ODA has

also reviewed OAC 901:10-5-04(D), (E), and (J). Based upon this review, ODA has determined that the violations cited herein are first cited violations with the category of seriousness of the violations as moderate or Category II, and the gravity of the violations as low. Therefore, if OFE or its owners and/or operators fail to comply with any of the corrective action required herein, OFE or its owners and/or operators would be subject to the assessment of a civil penalty in the amount of \$2,500.00 per week for 18 weeks, for a total of \$45,000.00 and the potential for escalated enforcement. **\$45,000.00**

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Please feel free to direct any questions concerning this NOD to Kevin Elder, Executive Director of LEPP. I look forward to your continuing cooperation in this matter.

Sincerely,



Fred L. Dailey, Director
Ohio Department of Agriculture

Cc: Kevin H. Elder, Executive Director, Livestock Environmental Permitting Program
Andy Ety, LEPP Engineering
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Mary Beth Ruttan, Assistant Attorney General
Jim Young, LEPP Inspector
Cathy Alexander, Ohio EPA
Jim Kirakofe, Licking SWCD